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**The Southern Pacific Company and their
Corrupt Judges of the Supreme Court
of California**



An Appeal to the People

BY

HORACE W. PHILBROOK

SAN FRANCISCO, CAL.

1899

**The Destruction of Individual Citizens by The
Southern Pacific Company, by Means of
Corrupt Judges as their Agents**

THE NEWMAN & LEVINSON CASE.

I.

THE CASE AS IT WAS TAKEN TO THE SUPREME COURT OF CALIFORNIA.

The facts of this case are set forth clearly, plainly, and without the least contradiction, in the record on file in the Supreme Court of California, and are as follows:

In 1881 John Levinson and William J. Newman founded in San Francisco the mercantile firm of Newman & Levinson, which has ever since been and still is doing a large and very profitable business in San Francisco. Ever since the firm was established, its business, assets and earnings have steadily and rapidly increased.

In 1887 Benjamin Newman, a brother of William J. Newman, entered the firm as a third co-partner. Thereafter the members of the firm were John Levinson, William J. Newman and Benjamin Newman.

Mr. Levinson was the head of a family residing with him in San Francisco, and consisting, besides himself, of his mother, Mrs. Fanny Levinson, an aged widow, and his two sisters, Julia Levinson and Ada Levinson.

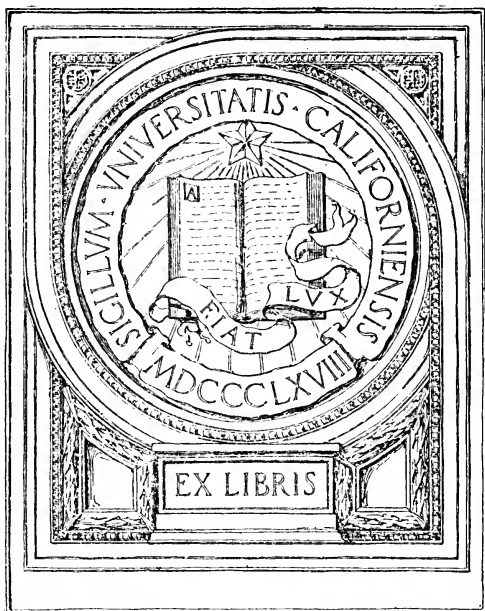
Mr. Levinson's entire property was invested in this firm of Newman and Levinson. And the sole means of his support, and of the support of his family, was the proceeds of his interest in that firm.

Mr. Levinson in the Hands of the Two Newmans.

In the latter part of the year 1888 Mr. Levinson fell sick of a mental disease, falling into the condition shown in the following testimony of his physician, Dr. C. F. Buckley, a specialist of long experience in mental diseases.

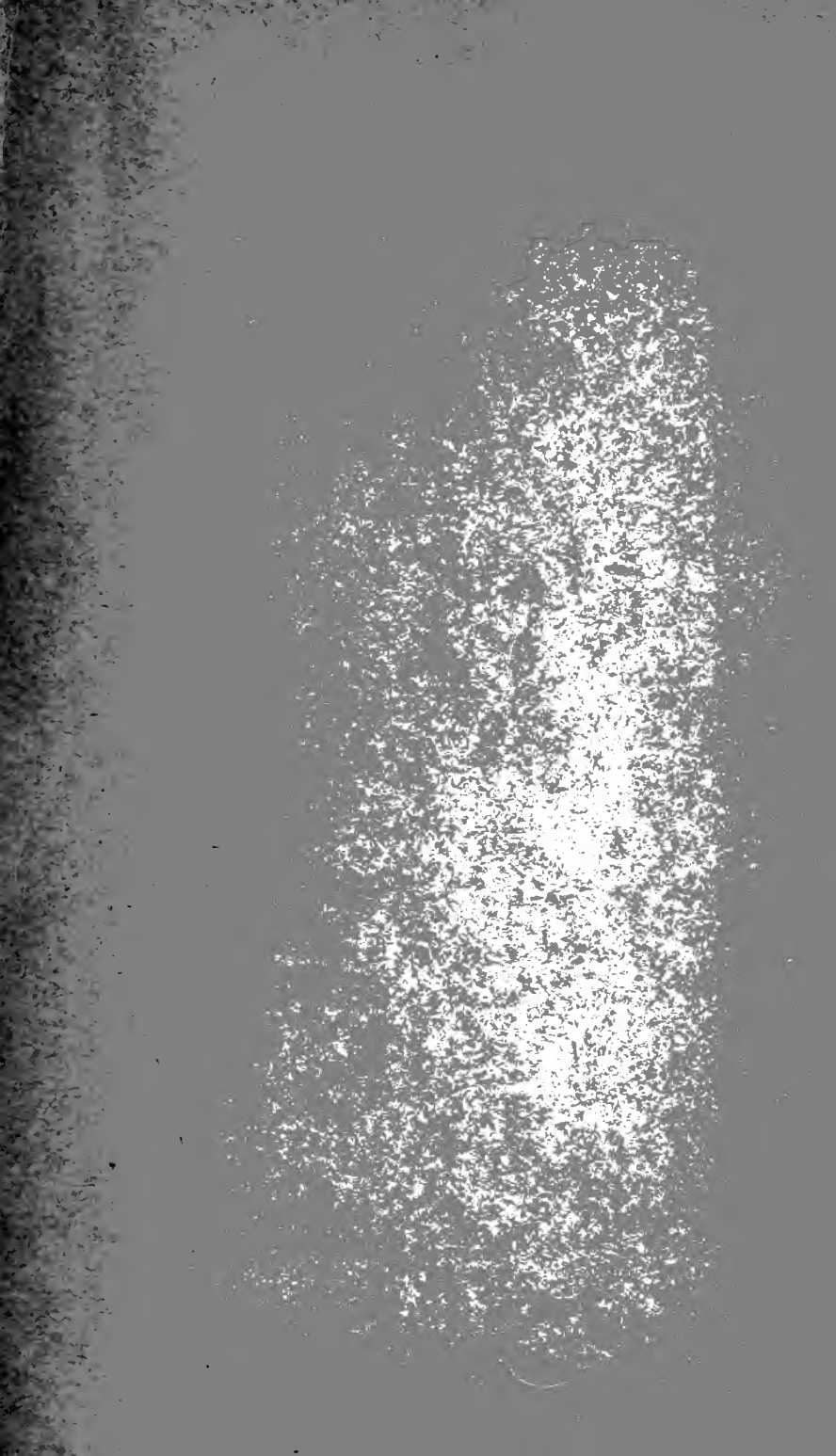
"He came under my professional care September 12, 1888, and remained under my care until he left for Europe in the latter part of February, 1889. He was afflicted during that time with hypochondria. This is a disease of the nervous system, and of the brain more particularly. It is a disease of the will power. Hypochondria borders on melancholia, and melancholia is insanity. Mr. Levinson was one of the worst cases of hypochondria I have ever seen. His condition bordered very closely on melancholia, which is a type of insanity. He was afflicted with great despondency and a tendency to suicide. I had him watched while under my care that he might not commit suicide. When he was first under my care he was living on Turk street with his mother and two sisters, Julia and Ada. By my advice he was removed from there in January, 1889, to the Lick House, so as to be away from his family. He was at the Lick House a month or two months before he left for Europe, and was confined to his room there. His great fear was that he would become insane. I do not think it was possible for him to investigate anything at that time. He was fully convinced that he was about to lose his mind. He had intelligence and could think intelligently on any subject if I would direct his mind and lead him along, but he was practically destitute of will power. I don't think while under my care he would have given attention to a single page of anything or would have read through a page of anything. He

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DESTRUCTION OF INDIVIDUAL CITIZENS BY THE
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SAN FRANCISCO, CAL.

1899

TO THE
ATTENTION OF

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CALIFORNIA

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1899

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THIS BOOK IS DEDICATED

TO THOSE WHO STRUGGLE AGAINST INJUSTICE,
TYRANNY AND OPPRESSION;

TO

“MEN WHO THEIR DUTIES KNOW,
BUT KNOW THEIR RIGHTS, AND, KNOWING, DARE
MAINTAIN.”

Reduced to its last analysis, the intelligent and impartial administration of justice is all there is of free government.

—HENRY CLAY CALDWELL.

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ABSTRACT

INTRODUCTION

In December, 1894, and in the first few months of 1895, a small part of the facts stated in the following pages was given to the public by the newspapers of San Francisco. And although the part of the facts so given to the public was small, and although the publication of even that small part was meager, yet they called forth at the time a wide-spread and deep indignation and a strong public opinion throughout California and particularly in San Francisco.

But, after the lapse of only a few months, a careful and complete suppression of the facts of this particular case by all the newspapers was established. By what means such suppression was established, the reader may judge for himself, upon the facts here laid before him. Ever since it was established, the public have had no other information of the case than what I could publish at my own expense. Such a publication was made by me in 1896 in a small circular entitled an "Appeal to the People," which was spread abroad in San Francisco for about three weeks just before the general election held in November, 1896, offering myself as an independent candidate for Judge of the Superior Court. Even with such inadequate means of reaching the people, there was in San Francisco such public opinion about the case that I was given at that election, according to the official returns, 12,644 votes.

Another such publication was made by me in March, 1897, in a memorial to the Legislature entitled "The Corrupt Judges of the Supreme Court of the State of California," of which some hundreds of copies were distributed. Another such publication was made by me in 1898 in another small circular entitled an "Appeal to the People," again offering myself to the electors of San Francisco as an independent candidate for Judge of the Superior Court, with the result stated below.

In none of the publications above mentioned was I able to state the case fully—not in either of the two circulars above mentioned, because of the necessary brevity of such a paper; and not in the memorial sent by me to the Legislature in March, 1897, because I had not, up to that time, collected the facts showing the hand of the organization known as The Southern Pacific Company.

It was not until the publication of the small circular to the electors of San Francisco in 1898, as above stated, that I was able to state to the public the agency of The Southern Pacific Company in these outrages, and even then, because of the necessary brevity of the paper, I could not exhibit the proof. But so great, so overwhelming is the power of that organization, so much are they held in fear by multitudes of people in California, and particularly in San Francisco, so extensive and widely felt is the reach of their evil power, that many persons who were most generously and nobly assisting me in the canvass, have repeatedly expressed to me their regret that I had mentioned the agency of The Southern Pacific Company, and have repeatedly declared their conviction that my having done so has only made every avenue for redress the

more difficult, if not utterly impossible. I have, however, felt and still feel the necessity as well as the propriety of showing the truth and the whole truth.

There are newspapers in San Francisco that profess hostility to The Southern Pacific Company and are continually making against that organization vague charges without sustaining them by any definite or satisfactory proof. Naturally, the persons composing the organization care little for such publications, or, if they care at all, favor them because they tend powerfully to make the people believe that everything that can be said against their organization rests upon no better basis than ill will. The facts of the particular case shown in the following pages are definitely, clearly, and fully proved, and without so much as the least contradiction in the evidence. The proof is in San Francisco and accessible to every one. The general outline is known, and the enormity of the case deeply appreciated, by many thousands of the best people in San Francisco. It is literally true that if but a single newspaper of San Francisco had used any of the opportunities, which have been repeatedly laid before them all, to publish the facts of this particular case, the full proof furnished by such a case as this, it would be known for an absolute certainty, and felt as such, by all the people, that the organization called The Southern Pacific Company, and its allied organizations, are the actual rulers of the country, and the resolved and truly terrible enemies of the nation and the people, and that they may with strict truth be described in the very words of the Declaration of Independence as there applied to the king of Great Britain, viz., their history "is a history of repeated injuries and usurpations, all

having in direct object the establishment of an absolute tyranny over these States." But when the facts are produced, when the proof is brought out, then such is the power and cunning of The Southern Pacific Company and its allied organizations, that the newspapers are either silent or mention the case only to misrepresent it in the interest of The Southern Pacific Company.

It is also literally true that if even a single newspaper of San Francisco had used any of the opportunities, which have been repeatedly laid before them all, to publish the facts of this particular case, there would have been called out long ago so great a power of public opinion as not only to compel redress but to make the case a monumental triumph of right and justice, and a mighty landmark in the world and particularly in the State of California, against human oppression and wrong. But on the contrary, in all the newspapers the case is carefully suppressed, or, if mentioned at all, it is mentioned only to be misrepresented for the purpose of averting public opinion and thus thwarting all means of redress.

COMPARED WITH THE DREYFUS CASE.

In November last (1898) I received from one of the most prominent ministers of religion in San Francisco, a letter concerning this particular case, in which among other things he wrote :

"I deeply sympathize with you and hope you will never give up the fight. That such outrages can be perpetrated in the name of justice in this last decade of the century in a sovereign State of

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this nation, passes belief; and that the cold-blooded selfishness of the people of the State can tolerate the perpetrators and not compel a righting of these wrongs is unthinkable but for the awful fact. All sympathize with the unfortunate and martyred Dreyfus, but yours is in my judgment a kindred outrage."

The particular case here, as no one who considers it need be told, is a far greater outrage than the case of Dreyfus. But the words "the cold-blooded selfishness of the people of the State," in the letter just quoted, are a mistake, a mistaken injustice to the people of California. There is between the case here and that of Dreyfus this difference: The authors of the Dreyfus outrage had not the power to control the newspaper press; in the case here, the authors of the outrage have had that power, and by exercising it have stood between their victims and the people of the State.

At length I am able to publish the facts of this particular case, and to show the fearful conditions prevailing in a great State of the Union that the existence of such a case demonstrates. It is the cause of every man, woman and child now in the State of California or who may hereafter come into the State. It is the cause of the American people and of humanity.

THE SOUTHERN PACIFIC COMPANY.

The organization known as The Southern Pacific Company is a chief character in the case. And since the case as here published will be read, not only in California, but elsewhere, it will be convenient to first state generally what the organization is:

In September, 1882, the United States Circuit Court

for the District of California, at the suit of The Southern Pacific Railroad Company, declared void and set aside all that part of the Constitution of California which provided for the taxation of railroad property. The case is *Railroad Tax Cases*, 13 Fed. Rep. 722. In giving judgment, the Court, speaking by Justice Field, said (at p. 730):

“The questions thus presented for our determination are of the greatest magnitude and importance. * * * Indeed, their examination has been accompanied with a painful anxiety to reach a right conclusion, aware as the Court is of the opinion prevailing throughout the community that the railroad corporations of the State, by means of their great wealth and the numbers in their employ have become so powerful as to be disturbing influences in the administration of the laws.”

It is to be noted that this was said *concerning the control of the judiciary—of the judges—*by “the railroad corporations of the State.”

It is to be noted also that such was the source of that declaration that it has the force of an admission, rather than that of a mere statement. It has also the force of an express adjudication—it is the language of a Court of the United States—a judgment embodying a fact commonly known.

That judgment was pronounced in 1882. And since that time the railroad corporations of California, together with many others, have been organized into a solid combination or trust, under the name of The Southern Pacific Company, and with such increase in their power as if they had acted upon the resolve of a tyrant of old, who, upon being at the outset of his

reign petitioned by his subjects for an abatement of the rigors of his predecessor, replied, "My little finger shall be thicker than my father's loins."

The Southern Pacific Company is an organization of corporations, and is, in form, a corporation which was created by a special act of the legislature of Kentucky passed March 17, 1884. Instead of an existence for fifty years only, to which private corporations created under the laws of California are limited, it is to exist perpetually. By the terms of the act creating it, it is authorized, among other things, to contract for and acquire, by purchase or otherwise, stocks, bonds or securities of any company, corporation or association; to enter into contracts in respect to the construction, establishment, acquisition, owning, equipment, leasing, maintenance or operation of any railroads, telegraphs, or steamship lines, or any public or private improvements, and to buy, hold, sell and deal in all kinds of private and public stocks, bonds and securities; and to fix and increase its capital stock at its pleasure.

Under color of such powers, The Southern Pacific Company fixed its capital stock at one hundred and fifty million dollars, and proceeded to issue its stock at par and take in full payment of it shares of the capital stocks of other corporations (taking such stocks at large rates of discount), and, having by such means obtained the control of such other corporations, proceeded to cause its agents to be elected as members of their respective boards of directors, and then, through those agents, to obtain from them leases of their respective railroads and other property for long terms of years, and under those leases to take possession of such railroads and property and operate them as one solid

combination or trust, with a combined and enormously watered capital stock. By such methods, The Southern Pacific Company was made a solid combination of corporations. The following are some of the corporations comprised in the organization prior to the time the outrages hereinafter stated were commenced : *

The Central Pacific Railroad Company, a California corporation, with a paid-up capital stock of upwards of sixty-seven million dollars and outstanding bonds of upwards of sixty million dollars, and being itself a consolidation of nine separate railroad corporations;

The Southern Pacific Railroad Company, a California corporation, with a paid-up capital stock of upwards of seventy million dollars and outstanding bonds of forty-three million six hundred thousand dollars and upwards, and being itself a consolidation of twenty-six separate railroad corporations ;

The California Pacific Railroad Company, a California Corporation, with a paid-up capital stock of twelve million dollars and outstanding bonds of six million eight hundred thousand dollars and upwards, and being itself a consolidation of five separate railroad corporations ;

The Northern Railway Company, a California corporation, with a paid-up capital stock of twelve million eight hundred and ninety-six thousand dollars and outstanding bonds of nine million nine hundred and seven thousand dollars, and being itself a consolidation of thirteen separate railroad corporations;

The Northern California Railway Company,

* NOTE.—The form, constituent elements and size of the organization as here stated, may be verified in *Poor's Manual of Railroads*, which is published annually. The purpose here is to indicate generally the size, power and character of the organization. It is therefore not intended to give here a full statement of all the corporations, roads and steamship lines which are comprised in it. For instance, The Southern Pacific Company is reported to own 41,721 shares of the capital stock of the Mexican International Railroad Company, of the par value of \$4,172,000, out of the total capital outstanding amounting to \$16,975,000. It is reported also to be continually growing in extent and power.

a California corporation, with a paid-up capital stock of one million two hundred and eighty thousand dollars and outstanding bonds of one million seventy-four thousand dollars ;

The South Pacific Coast Railway Company, a California corporation, with a paid-up capital stock of six million dollars and outstanding bonds of five million five hundred thousand dollars, and being itself a consolidation of seven separate railroad corporations ;

The Oregon and California Railroad Company, an Oregon corporation, with a paid-up capital stock of nineteen million dollars and outstanding bonds of eighteen million eight hundred and forty-two thousand dollars :

The Southern Pacific Railroad Company of Arizona, an Arizona corporation, with a paid-up stock of nineteen million nine hundred and ninety-five thousand dollars and outstanding bonds of ten million dollars ;

The Southern Pacific Railroad Company of New Mexico, a New Mexico corporation, with a paid-up capital stock of six million eight hundred and eighty-eight thousand dollars and outstanding bonds of four million one hundred and eighty thousand dollars ;

The Galveston, Harrisburg and San Antonio Railway Company, a Texas corporation, with a paid-up capital stock of twenty-seven million ninety-three thousand dollars and upwards and outstanding bonds of twenty-five million five hundred and twenty-eight thousand dollars ;

The New York, Texas and Mexican Railway Company, a Texas corporation, with a paid-up capital stock of six hundred and thirty thousand dollars and outstanding bonds of one million five hundred and eighteen thousand dollars ;

The Texas and New Orleans Railroad Company,

a Texas corporation, with a paid-up capital stock of five million dollars and outstanding bonds of five million eight hundred and fifteen thousand dollars ;

The Houston and Texas Central Railroad Company, a Texas corporation, with a paid-up capital stock of ten million dollars and outstanding bonds of sixteen million dollars and upwards;

The Austin and Northwestern Railroad Company, a Texas corporation, with a paid-up capital stock of one million sixteen thousand dollars and outstanding bonds of one million nine hundred and twenty thousand dollars;

The Fort Worth and New Orleans Railway Company, a Texas corporation, with a paid-up capital stock of three hundred thousand dollars and outstanding bonds of seven hundred and nine thousand dollars;

The Gulf, Western Texas and Pacific Railway Company, a Texas corporation, with a paid-up capital stock of five hundred thousand dollars;

The Direct Navigation Company, a Texas corporation, with a paid-up capital stock of fifty thousand dollars and outstanding bonds of one hundred and fifty thousand dollars;

The Louisiana Western Railroad Company, a Louisiana corporation, with a paid-up capital stock of three million three hundred and sixty thousand dollars, and outstanding bonds of two million two hundred and forty thousand dollars;

The Morgan's Louisiana and Texas Railroad and Steamship Company, a Louisiana corporation, with a paid-up capital stock of fifteen million dollars and outstanding bonds of seven hundred and forty-five thousand dollars and upwards—this corporation owning also a controlling interest in the capital stocks of six other Louisiana corporations and by means of such ownership having them consolidated with itself, namely, the

Gulf, Western Texas and Pacific Railroad Company, the Texas Transportation Company, the Buffalo Bayou Ship Channel Company, the Houston and Texas Central Railway Company, the Houston Direct Navigation Company, and the Atchafalaya Bay Company;

The Iberia and Vermillion Railroad Company, a Louisiana corporation, with a paid-up capital stock of three hundred thousand dollars and outstanding bonds of upwards of six hundred and twenty-nine thousand dollars.

Prior to the time the outrages hereinafter stated were commenced, the aggregate capital of the organization, The Southern Pacific Company, in the combined capital stocks and outstanding bonds above mentioned, amounted to upwards of six hundred and thirty-two million dollars; and it was even then in the possession of and operating more than seven thousand three hundred miles of railroads, all adjacent to and connected together, and extending over the States of Oregon, California and Nevada; over Utah; across the territories of Arizona and New Mexico; and over the States of Texas and Louisiana; and also many river steamers and ferry steamers and numerous ocean steamships plying between New York and various ports in Louisiana, and lines of steamers upon the Gulf of Mexico.

In a sworn complaint filed in the United States Circuit Court at San Francisco in January, 1896, The Southern Pacific Company state the number of persons directly employed by them, in their "Pacific system" alone—that is, upon their roads in Oregon, California, Nevada, Utah, Arizona and New Mexico—to be 71 general officers and 15,064 men exclusive of the general officers.

The annual income of The Southern Pacific Com-

pany may be seen from what is shown from their own report for their fiscal year ending in 1898. For that year their total receipts, as shown by their published report, were upwards of fifty-five million dollars—an annual income far greater than the government of the United States possessed at any time within the first fifty-seven years after the constitution of the United States was adopted.*

The principal place of business of The Southern Pacific Company has been, ever since the organization was formed, at San Francisco, California.

From the time the organization of The Southern Pacific Company was effected, the few individuals owning together a controlling amount of its capital stock, have also owned controlling amounts in other powerful private corporations having their principal places of business in San Francisco. One of these is the Market Street Railway Company, a California corporation operating an extensive system of street railroads in San Francisco, and having a capital stock of eighteen million six hundred and seventeen thousand dollars and outstanding bonds of eleven million, four hundred and thirty-two thousand dollars. Another is the Pacific Mail Steamship Company, a California corporation. Another is the Oakland Water Front Company, also a California corporation. These and several other large, wealthy and powerful corporations located in San Francisco, have, from the time The Southern Pacific Company was formed, acted in close friendship and alliance with it.

Ever since The Southern Pacific Company was formed the persons comprising it have maintained in Cali-

* *Clusky ; Political Text Book or Encyclopedia.*

for a control of the newspaper press; in part by subsidies paid by them to newspapers and by treating the proprietors and managers as their favored friends or proteges, and in part by publishing newspapers of their own, disguising their ownership so as to deceive, hoodwink and mislead the people. One of the newspapers which has thus been for many years published by them, is *The Record-Union*, a daily morning newspaper published in Sacramento. Another is *The Evening Post*, a daily evening newspaper published in San Francisco.

Ever since The Southern Pacific Company was formed, the persons composing it have, by means of the wealth and power of the organization and the numbers in its employ or dependent upon it, and through the agency of the "boss" and the "machine" and the "practical politicians," successfully pursued the policy of procuring their own corrupt agents, or individuals known by them to be pliable to their wishes, to be placed in nomination for public offices, and particularly for judicial offices, in California, by the respective principal political parties, and have by the same means excluded from such nomination persons known or believed by them to be honest men and incapable of being made their corrupt instruments, and by so doing have for many years overridden the Constitution and laws and corrupted their administration, and have persistently pursued throughout the State the policy of rewarding persons friendly and subservient to them, by bestowing upon such persons, by the means just indicated, positions as public officers, and by conferring upon them favors and opportunities of becoming prosperous and wealthy, and have as persistently pur-

sued the policy of excluding from public office and from opportunities to become prosperous or wealthy, all persons known or supposed to be of incorruptible integrity. And during all that time they have pursued a like policy concerning public offices and officers in the government of the United States.

The purpose of The Southern Pacific Company, and of its allied organizations, is to build up for their proprietors enormous fortunes out of what their fellow men produce, allowing their fellow men to retain as little of their own as possible, and to so entrench themselves that they can never be brought to justice. In effecting that purpose, The Southern Pacific Company has always pursued, as did the antecedent organizations of which it is composed, as its settled and resolved practice, the systematic subordination of right to expediency, the theory that all means may be justifiably employed, however wrongful, base or cruel, of being crafty, merciless, unsparing, without conscience, morality, sentiment, honor or humanity, and at all times ready and strong to do evil. The railroad is essentially and effectively a monopoly. They are therefore free from competition. It is also a public highway, and as such indispensable to the people. They therefore exercise functions of sovereignty, levying, collecting and appropriating enormous taxes and exactions in the form of fares and freights. By means of their position, their enormous revenue, the numbers of persons in their employ, and the numbers dependent directly or indirectly upon them for the opportunity to earn a livelihood, they have at hand, in its most efficient form, the terrible weapon of the boycott. The haggard shapes of Hunger, Cruelty, Force, Fear, with

which the whole universe of sentiment is haunted by day and by night, are so many thongs in their whip. They are held in fear and in ever increasing fear by every laborer, every merchant, every lawyer, every physician, every teacher, every college professor, every politician, every political orator, and by all the numerous slaves who make "policy" their god. This is a condition universally recognized as such in San Francisco. It reminds one of the assertion of Dr. Le Bon, a contemporary French writer, that, through science, man has learned that to be slaves is the natural condition of all human beings, because naturally the will of man is weak and so he becomes dispirited, anarchy seizing upon the uneducated and sullen indifference upon the more cultivated. This evil and terrible organization own the courts. They control the newspapers. If you stand in their way, and will not abandon duty and honor and the most fundamental rights of a human being and be pliable and submit to their vile, degrading and wicked demands, they consign you and those dependent upon you, wife and children with you, to the deprivation of the means of living and thus to penury and destitution, with all the consequent suffering and tortures which such a condition necessarily includes, and to deaths of lingering torture and horror.

I show the facts of a particular case, particular outrages that have been practiced and kept up in the State of California for nearly five years.

THE NEWMAN & LEVINSON CASE.

I.

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Mr. Levinson was the head of a family residing with him in San Francisco, and consisting, besides himself, of his mother, Mrs. Fanny Levinson, an aged widow, and his two sisters, Julia Levinson and Ada Levinson.

Mr. Levinson's entire property was invested in this firm of Newman and Levinson. And the sole means of his support, and of the support of his family, was the proceeds of his interest in that firm.

Mr. Levinson in the Hands of the Two Newmans.

In the latter part of the year 1888 Mr. Levinson fell sick of a mental disease, falling into the condition shown in the following testimony of his physician, Dr. C. F. Buckley, a specialist of long experience in mental diseases.

"He came under my professional care September 12, 1888, and remained under my care until he left for Europe in the latter part of February, 1889. He was afflicted during that time with hypochondria. This is a disease of the nervous system, and of the brain more particularly. It is a disease of the will power. Hypochondria borders on melancholia, and melancholia is insanity. Mr. Levinson was one of the worst cases of hypochondria I have ever seen. His condition bordered very closely on melancholia, which is a type of insanity. He was afflicted with great despondency and a tendency to suicide. I had him watched while under my care that he might not commit suicide. When he was first under my care he was living on Turk street with his mother and two sisters, Julia and Ada. By my advice he was removed from there in January, 1889, to the Lick House, so as to be away from his family. He was at the Lick House a month or two months before he left for Europe, and was confined to his room there. His great fear was that he would become insane. I do not think it was possible for him to investigate anything at that time. He was fully convinced that he was about to lose his mind. He had intelligence and could think intelligently on any subject if I would direct his mind and lead him along, but he was practically destitute of will power. I don't think while under my care he would have given attention to a single page of anything or would have read through a page of anything. He

was without power of application. John Levinson, while under my care, had very little will power left, though his loss of will power was not total. He could be easily led to do anything. I don't pretend this man was insane. I was with Mr. Levinson very often during the time he was under my care, as I have testified. I must have seen him at least a hundred times. During all that time his will power was so weak that he would have been very likely to give way on any subject to any one in whom he had confidence."

His condition is also shown in the testimony of his sister, Ada Levinson, as follows :

"I saw my brother, John Levinson, often while he was under the care of Dr. Buckley in 1888 and 1889. The condition of his mind was very bad. He used to say that in reading he saw the words, but did not understand what he was reading. He was always threatening suicide because he supposed he was losing his mind. I visited him a few times while at the Lick House. I noticed that while there he was very much weaker than he had been at home. While he lived with us at home he neglected his clothing, and used to be unable to walk without support."

In January, 1889, while Mr. Levinson was in the condition shown above, and away from his family, and confined to a room in the Lick House, his co-partners, William J. and Benjamin Newman, went alone to Edmund Tauszky, a lawyer, and had him prepare for them and from their directions a document couched in very complicated and involved language, and occupying eleven long and closely type-written pages, professing to be articles of partnership of the firm of Newman & Levinson. This document, under the

guise of dividing part of the profits as interest on the capital of the partners, very considerably reduced Mr. Levinson's share of the profits, and contained also a long and involved section, which, upon Mr. Levinson's death, the two Newmans claimed to give them the right to take his interest in the firm at a valuation to be fixed by themselves alone. Mr. Tauszky, the lawyer, did not meet or in any way consult with Mr. Levinson, and received no direction from him or in his behalf. On completing the document Mr. Tauszky delivered it to the two Newmans. After Mr. Levinson's death the two Newmans produced it as the articles of partnership of the firm of Newman & Levinson, with the date January 24, 1889, written in and with the signature of Mr. Levinson and their own signatures subscribed to it. But no disclosure has ever been made of how Mr. Levinson's signature was obtained.

Dr. Buckley testified, after examining the document called articles of partnership, last mentioned, that, in his judgment, Mr. Levinson could have understood it if he had read it, but that he "would have been unable, through lack of will power, to examine or understand a single page of it."

In February, 1889, Benjamin Newman went to Mr. Tauszky and conducted him to Mr. Levinson's room in the Lick House, telling him that Mr. Levinson wanted to make a will. Thereupon Mr. Tauszky made a will for Mr. Levinson, appointing one Raveley his executor without bond, providing that after Mr. Levinson's death his estate should continue to hold and carry on his interest in the firm, appointing Benjamin Newman a trustee to look out for it, and giving him half its earnings as its compensation, providing that

the testator's mother should have \$200 per month from his death out of the earnings of his interest in the firm, and giving \$3,000 to one of the saleswomen employed by the firm, and all the remainder of his estate to his mother and two sisters named above. The will bore date February 21, 1889, and was signed by Mr. Levinson.

Until after Mr. Levinson's death none of his family knew, nor was a word dropped, of the existence of the articles of partnership or of the will.

Late in February, 1889, Mr. Levinson was taken to Europe to seek relief from his malady. He obtained no relief, and returned to San Francisco in November, 1889. From that time until his death he was sick a great part of the time. William J. Newman testifies that he attended also to business in the store, but he does not say how much he did so, or whether with any efficiency. Mr. Levinson died February 25, 1890.

At the time of Mr. Levinson's death the fame of the partnership of Newman & Levinson and the good will of its business extended not only throughout San Francisco and the neighboring cities and towns, but through all the states of the Pacific Coast. Its business was well established, and was large and well and widely and favorably known. In June, 1889, its merchandise on hand amounted to \$183,119.29, and was continually increasing. At the time of Mr. Levinson's death the sales of goods by the firm amounted to almost half a million dollars per year, and were continually and rapidly increasing. Mr. Levinson was entitled to thirty per cent. of the profits. At the time of his death his share of the profits was about \$1,000 per month, and was continually increasing.

Ralph C. Harrison and the Two Newmans.

During the year 1890 Ralph C. Harrison was an attorney at law, practicing as such in San Francisco. Within a few days after Mr. Levinson's death the executor Raveley employed Mr. Harrison as the attorney and legal adviser on behalf of Mr. Levinson's estate. At the same time the two Newmans, with the knowledge of the executor, but with no knowledge or suspicion of the fact on the part of the dead partner's family, also employed Mr. Harrison as their adviser in reference to their deceased partner's estate.

Mr. Harrison, under his employment by the executor, continued to be the attorney and legal adviser on behalf of Mr. Levinson's estate until January, 1891, when he became a Justice of the Supreme Court. Under that employment Mr. Harrison was substantially the attorney and legal adviser on behalf of the dead partner's family, Mrs. Levinson and her daughters; not only is this manifestly true, but it was expressly so decided by the Supreme Court of California on July 21, 1893, in the case of *Bergin vs. Haight* (99 Cal. 52), a decision in which the justices W. H. Beatty, C. H. Garoutte, T. B. McFarland and J. J. De Haven all concurred. Indeed, Mr. Harrison's entire compensation for his services in that employment was an expense which necessarily fell on the dead partner's family, and on them alone.

But, as will appear, all the time Mr. Harrison was thus the attorney and legal adviser on behalf of Mr. Levinson's estate, he was also secretly advising the two Newmans against that estate, and was, by most cruel and wicked means, assisting the two

Newmans to cut off their deceased partner's family from means of redress.

Mr. Levinson's death left his co-partners, the two Newman brothers, in the exclusive possession of the entire assets, business and income of the firm. Their partner's death thus gave them the physical power to withhold from his helpless family even their daily means of livelihood.

Ever since Mr. Levinson's death the two Newmans, his co-partners, have remained in possession of all the assets and business and the entire income of the firm, holding and claiming as their own the entire interest and income of their dead partner. Between Mr. Levinson's death and June 18, 1892, the two Newmans actually divided between themselves as profits of the firm no less than \$105,540.56, besides greatly increasing the assets. Of the profits they so divided at least \$31,662.16 belongs to their dead partner's estate and to his mother and sisters. And even without any increase in the profits this would give them up to December, 1896, more than \$93,000 in profits alone, all belonging to their dead partner's estate and family. At a low estimate, the estate of Mr. Levinson now in the hands of the two Newman brothers aggregates at least \$200,000. It is probably more than that.

Within a few days after Mr. Levinson's death William J. Newman went to his dead co-partner's aged mother, who by the death of her son had been left the head of the family, and offered to loan her from time to time such sums as she might need for family expenses. She could not refuse the offer, and she received from him as loans in the next four months various sums amounting to \$540 in all. But at the beginning of

July, 1890, Mr. Newman, acting on the secret advice of Ralph C. Harrison, angrily cut off even the loan of money for any of the dead partner's family.

On the 8th day after Mr. Levinson's death, the two Newmans, acting on the secret advice of Ralph C. Harrison, prepared a letter to themselves from Mrs. Levinson and her daughters, making Mrs. Levinson and her daughters say to them, "We do not desire to employ any third person to assist at the stock-taking and inventory of the assets of the late firm of Newman & Levinson, now in progress." Having prepared this letter, the Newmans and the executor, Raveley, took it to Mrs. Levinson and her daughters, and, though giving no explanation of its purpose, induced them to sign it and hand it back to the Newmans.

Between Mr. Levinson's death and March 17, 1890, the two Newmans made out what they called an inventory and appraisement of the assets of the firm. They did this by themselves and their own employees alone. The stores were in twelve departments, and such inventoring and appraising as was done was done in all the departments at the same time and under the management of one trusted employee of the two Newmans in each department. At the same time the buying and selling were being carried on precisely as had been done in Mr. Levinson's lifetime. *Not a particle of evidence has been produced as to what goods were valued or what values were put down.* None of the persons who inventoried any of the goods or set down any of the values, or actually saw or knew whether all the goods were inventoried, or what values were given, either in the establishment as a whole or in any department—no such person has testified. The two Newmans pres-

ently avowed, however, that no allowance was made for the good will of the business.

When the Newmans had finished their inventory and appraisement they placed the results on a sheet of paper which they called a "balance sheet." This "balance sheet" did not state in any one sum the value of the share of any partner, but by looking through it and putting together items, it appeared from it, according to the Newmans, that the value of Mr. Levinson's interest in the firm was \$21,389.10.

Neither the inventory and appraisement, nor any part of it, nor the "balance sheet," nor any paper relating to the inventory and appraisement, was ever shown or mentioned to Mrs. Levinson or to either of her daughters or to me.

On or about March 17, 1890, the two Newmans and the executor, Raveley, told Mrs. Levinson and her daughters that the value of Mr. Levinson's interest in the firm was \$20,790.88, and that that sum was all that his estate would receive. Mrs. Levinson and her daughters were greatly dissatisfied, as indeed they could scarcely have failed to be at such a message. I was then a lawyer practicing my profession in San Francisco, and as soon as Mrs. Levinson and her daughters were told that Mr. Levinson's estate was to receive but \$20,790.88 from his interest in the firm, they employed me to represent them and act for them specially in relation to it. My employment was to act in conjunction with Ralph C. Harrison.

It is a settled rule and principle in law, and in common sense as well, that no one makes any admission whatever against himself by trying to compromise with an adversary or by anything he may say or omit to say

in the effort to compromise. This principle is specially applicable to the case of Mrs. Levinson and her daughter, for the Newmans not only had the power to withhold, but were in fact withholding from them even their daily means of subsistence; the family needed money without delay, and had to avoid saying or doing anything that might give the Newmans a pretext to be hostile. The Newmans and the executor, Raveley, and Ralph C. Harrison all well knew the helpless condition of Mrs. Levinson and her daughters and their present need of money for living expenses. It was impossible for us to find, even if we had tried, whether the Newmans had made their inventory and appraisal honestly or not, and as the family needed money without delay and for their present sustenance, they dared not raise any question of the Newmans' honesty. Therefore, to raise the valuation of the dead partner's interest in the firm we sought some ground that would not accuse the Newmans of dishonest intention. We therefore asked whether there were articles of partnership. In reply we were shown the articles above mentioned. We did not know then how the Newmans had obtained those articles, and we could not inquire without questioning their honesty and giving them an excuse to be hostile. We therefore looked at the articles of partnership and asked whether they had allowed Mr. Levinson's estate anything for the good will of the business and trade-mark. They answered that they had not. Here, then, was a ground and the only ground on which we could demand a large increase in the valuation and seek a compromise without questioning the honesty of the Newmans and thus giving them a pretext to be hostile. In the course we pursued we made

no admission that the articles of partnership were in fact the partnership articles of the firm, or that the inventory and appraisement of the Newmans was in any respect correct or just. We simply tried to compromise with them. Mrs. Levinson and her daughters, and I on their behalf, continually said to Ralph C. Harrison, to the executor Raveley, and to the Newmans, that we should not consent for the Newmans to take Mr. Levinson's interest in the firm for any such sum as \$20,790.88. To all of whom we continually said that we wished to settle or compromise without litigation. To all of them we urged that an allowance should be made for the good will of the business, urging this as a ground for asking the Newmans to concede to Mr. Levinson's estate a larger sum of money than they had named.

On March 17 or 18, 1890, I called on Ralph C. Harrison and told him of my employment by Mrs. Levinson and her daughters. At that time I told him also that they would not consent for the Newmans to take Mr. Levinson's interest in the firm for any such sum as that named by the Newmans, also that the articles of partnership had been shown to me, that I had been told that no allowance had been made for the good will of the business, that I thought such an allowance ought to be made and I asked him to urge that view. Mr. Harrison on his part said little. He said something to the effect that he did not think Mr. Levinson's estate was entitled to share in the good will of the business, but nothing as to what he would do in the matter. At my argument, urging him to adopt the view I had expressed, he only smiled and was silent. At my request, however, he expressly promised me *that*

I should be notified of any step which should be taken in regard to the interest of the estate in the firm of Newman & Levinson. This promise he utterly disregarded, as will appear.

On March 18, 1890, the executor Raveley and Mr. Harrison, without opposition, had the will of Mr. Levinson, mentioned above, admitted to probate by the Superior Court in San Francisco and Raveley appointed executor without bond.

On May 8th the executor Raveley and Mr. Harrison procured from the Superior Court the appointment of three persons as appraisers of Mr. Levinson's estate. Two only of the persons so appointed appraisers qualified as such. On May 21, 1890, the two persons who had thus qualified as appraisers signed an inventory and appraisement of Mr. Levinson's estate, saying that the value of Mr. Levinson's interest in the firm of Newman & Levinson was worth \$20,790.88, but without indicating how they had arrived at that sum. As a matter of fact, it was only a sum named by the two Newmans, and was taken from them without examination. On inquiry at Mr. Harrison's office I found that such an inventory and appraisement had been signed and saw it. I immediately protested against it as unjust, and asked Mr. Harrison that it be made to show what was included and valued as Mr. Levinson's interest in the firm. Mr. Harrison then promised me that he would consider my request and notify me of his conclusion. He never gave any such notification.

The McKinley Tariff Enormously Increases the Value of the Assets.

On May 21, 1890, the McKinley tariff bill was passed by the House of Representatives. The passage of

this bill and its then assumed enactment as a law, gave an enormous increase to the value of the merchandise of the firm of Newman & Levinson then on hand. The Newmans, in their inventory and appraisement made in March, had stated the value of the merchandise on hand as \$208,754.19. The McKinley tariff law increased the value of all the goods so on hand, of some 25 per cent., and of others 200 per cent., "and all the way from 25 per cent. up." The McKinley tariff also enormously increased the value of the business of the firm. All this effect of the passage of the McKinley bill on the goods on hand and on the business of the firm was well known to the two Newmans, but they did not divulge even a word of information about it to Mrs. Levinson and her daughters, or to any one on their behalf.

Mr. Harrison Secretly Prescribes Starvation as a Method of Overpowering His Clients, the Deceased Partner's Family.

In June, 1890, William J. Newman and the executor Raveley were away on a vacation together at the Blue Lakes. They returned early in July, 1890.

It was just after William J. Newman's return from that vacation that he cut off the loan of money to Mrs. Levinson. Mrs. Levinson called upon him for a loan, as he had offered, and he treated her angrily, told her that Mr. Harrison, "his lawyer," had told him not let her have another cent of money until she stopped fighting or threatening to fight him and his brother, and that he would not let her have any more money. Wm. J. Newman received that advice from Ralph C. Harrison, who at that time was attorney for the exec-

utor, and for those whom the executor represented, *i. e.*, Mrs. Levinson and her daughters.

It was upon that treacherous, cruel and cowardly advice of Ralph C. Harrison that the executor and the two Newmans withheld every cent of the deceased partner's estate from Mrs. Levinson and her two daughters as long as they possibly could, all the while fraudulently striving, with Ralph C. Harrison's help, to entangle the estate and the deceased partner's family by fraudulent proceedings in the Probate Court. By such means every cent of the estate was fraudulently and wickedly withheld from the deceased partner's family until Nov. 19, 1891—*i. e.*, for more than twenty months—during all which time, as Ralph C. Harrison and the two Newmans well knew, that family had no other means of livelihood and were kept from absolute want only by what one of the two daughters earned by giving lessons in music. And that siege of penury and starving was broken only by an order obtained from the Probate Court, against the open resistance of the executor and the two Newmans, resistance to which they were instigated by Ralph C. Harrison.

Mr. Harrison and the Executor Trying to Obtain Surreptitiously and Upon False Grounds an Order of the Probate Court in Favor of the Two Newmans.

As a cover for Mr. Harrison, and to assist in carrying on the conspiracy, J. B. Reinstein and M. S. Eisner (Reinstein & Eisner) were employed in July, 1890, ostensibly as attorneys for the two Newmans. On July 10, 1890, Reinstein & Eisner first appeared, ostensibly as attorneys for the Newmans. On that day the

two Newmans, represented by Reinstein & Eisner, filed in the probate department of the Superior Court (the department having charge of the administration of Mr. Levinson's estate) a petition stating that an inventory and appraisement of *all the assets* of the firm of Newman & Levinson had been made, *entirely suppressing the fact of the omission to allow for the good will of the business*, and stating that such inventory and appraisement showed the value of Mr. Levinson's interest in the firm to be \$20,790.88 and no more; that they (the two Newmans) had, under the articles of partnership, a right to take Mr. Levinson's interest for that sum, and to pay for it in twelve equal monthly installments, beginning one month after his death. They asked for an order directing the executor Raveley, to transfer Mr. Levinson's interest in the firm to them on those terms. The petition was set for hearing on July 26, 1890. On July 16, 1890, the executor Raveley, by Ralph C. Harrison as his attorney, without notice to the dead partner's family or to me, filed in the Court the inventory and appraisement of the two appraisers mentioned above. Mr. Harrison and the executor appeared in Court on July 26, 1890, when the Newmans' petition was called for hearing, and filed an answer to it, *falsely saying that all the statements of the two Newmans in their petition were true*, and that the executor was willing to obey any order the Court might make. Mr. Harrison signed this answer with the words "Jarboe, Harrison & Goodfellow, attorneys for the executor." The executor himself did not sign. Though I had not been notified of what was thus being attempted, I found it out, and addressed the Court on behalf of the dead partner's

family. M. S. Eisner asked the Court, on behalf of the Newmans, to refuse to hear any one on behalf of Mrs. Levinson and her daughters, saying that only the executor had a right to be heard. Mr. Harrison remained silent. It was only after a contest that I was allowed to show the Court that it had no jurisdiction to make the order so asked for by the Newmans, the executor and Mr. Harrison. The Court took that view of the case and denied the petition.

Is it not plain that this proceeding in the Probate Court was an act of fraudulent confederacy in which the confederates were the two Newmans, M. S. Eisner, Ralph C. Harrison and the executor?

This was on July 26, 1890. On coming away from the Court I spoke with Ralph C. Harrison, the executor, and Mr. Eisner, telling the executor in the presence of Mr. Harrison and Mr. Eisner, that Mrs. Levinson and her daughters wished him to claim an allowance for the value of the good will of the business; that they thought it very valuable, and that I would as soon as convenient apply to the Probate Court for an order requiring him to file an inventory and appraisement including such an allowance and that we could thus obtain an adjudication upon the point.

The Making of Mr. Harrison, With Three Other Persons, Justices of the Supreme Court.

On August 13, 1890, Ralph C. Harrison obtained the nomination of the Republican party of California for the office of Associate Justice of the Supreme Court. At the same time Wm. H. Beatty was made the candidate of the same party for the office of Chief

Justice, and Charles H. Garoutte and John J. De Haven for Associate Justices. The terms of office for which Mr. Harrison, Mr. Beatty and Mr. Garoutte were such candidates, was twelve years, that of Mr. De Haven four years, and all were to take office together on the first Monday after the first day of January, 1891. As the Republican party has been generally predominant in California, all these four candidates were from the time of their nomination likely to be elected, and they all were elected on Nov. 4, 1890, and took office together in 1891.

This nomination of Ralph C. Harrison as a Justice of the Supreme Court of California was given to him by the organization of corporations called The Southern Pacific Company, and E. S. Pillsbury, one of their agents, openly managed the nomination in the Convention. The other three were either given their nominations by the same organization or with their approval. All four of them were the candidates of The Southern Pacific Company. On August 15, 1890, an editorial appeared in *The Record-Union*, the newspaper organ of The Southern Pacific Company, praising the nomination of all of them. On August 27, 1890, a long editorial appeared in the same paper, praising every one of them separately, urging their election, and disparaging separately all the candidates of the opposite party for the same offices.

Wm. H. Beatty had already filled the office of Chief Justice for two years, having been first elected in 1888 to fill the remainder of an unexpired term. At that election (in 1888) he was also the candidate of The Southern Pacific Company. On October 24, 1888, a long editorial in support of his candidacy appeared in their same newspaper, *The Record-Union*.

As the Supreme Court of California consists of seven Justices, these four would of themselves have given the court to The Southern Pacific Company. But there was, also, at that very time already in office a Justice of the Supreme Court who had already been long and widely and justly known as being in his official capacity as such Justice a corrupt and unscrupulous agent of the same organization of corporations. This was Thomas B. McFarland, who in 1886 had been elected an Associate Justice for a term of twelve years. On August 27, 1886, there appeared in the same newspaper organ, *The Record-Union*, an editorial praising him and urging his election. On October 22, 1886, there appeared in the same paper a long editorial in his eulogy, purporting to give a review of his life, and urging his election. This last-mentioned editorial was under the caption:

“A REPRESENTATIVE MAN.

“Hon. T. B. McFarland, Nominee for Justice of the Supreme Court.”

The Secret Transfer of the Deceased Partner's Interest in the Firm to the Two Newmans.—The Plot to Corrupt the Court.

On September 6, 1890, Ralph C. Harrison and the executor Raveley, and William J. Newman and Benjamin Newman and M. S. Eisner, held a secret meeting in the law office of Mr. Harrison in San Francisco, and there and then the executor Raveley, by two writings, *made out in the handwriting of Ralph C. Harrison, and signed by Ralph C. Harrison as the only witness,*

secretly transferred John Levinson's interest in the firm of Newman & Levinson to the two Newmans, the surviving partners, for the sum of \$20,790.88 (a sum which was less by \$598.22 than the very inventory and appraisal and "balance sheet" made by the Newmans in March, stated as its value, and which was probably less than a seventh of its actual value), payable in twelve equal monthly installments extending through the year next after Mr. Levinson's death. The meeting was held in secret, and everything done there was done in secret, and was kept secret as long as possible. Neither Mrs. Levinson nor either of her daughters, nor any one representing them, nor any person, was informed of the meeting or of anything done at it. Not a word about it was dropped. The executor never made to the Court any report whatever of the transaction. Mr. Harrison's express promise that no step should be taken in regard to the interest of the estate in the firm of Newman & Levinson without notice to me, was used as an additional cloak for the secrecy; for that promise amounted to a continual representation, to Mrs. Levinson and her daughters and to me, that no such transaction had taken place.

It is this secret transfer to the two Newmans that the six Justices, Mr. Harrison's associates, have upheld.

The Scheme of the Confederates.

Is it difficult to understand what was the scheme of Ralph C. Harrison, the executor Raveley, William J. Newman, Benjamin Newman and M. S. Eisner in their

secret transaction of September 6, 1890, just stated? Let us see.

If the scheme of the two Newmans and the executor and Ralph C. Harrison, then well under way, to starve Mrs. Levinson and her daughters into submission, should fail, and if they should succeed in causing the executor Raveley to be removed from his position, and obtain the appointment of some one in his place who would be willing to bring suit in the courts against the Newmans to recover Mr. Levinson's property from them, the Newmans could then answer that they had bought their dead partner's interest in the firm from his executor, and could produce *the two writings in the handwriting of Ralph C. Harrison and signed by Ralph C. Harrison as the witness.* Before such a suit could be begun Ralph C. Harrison would be one of the seven Justices of the Supreme Court of the State, and installed as such for a term of twelve years. Such a suit against the Newmans would necessarily include, as one of its grounds, a charge that the transfer made to them by the executor on September 6, 1890, was an exceedingly gross and base fraud. And, since the executor was acting on the advice of Ralph C. Harrison, and the papers constituting the bill of sale were in Ralph C. Harrison's handwriting and signed by him alone as the witness, the charge of fraud could not be made without involving as a corrupt party to the fraud one who would then be one of the seven Judges of the Supreme Court of the State. Would not any attorney mindful of his own interest shrink from carrying on such a suit? And to decide the suit against the Newmans the Justices of the Supreme Court would necessarily involve one of their own members in the severest

censure. Would not such a fact be likely to put an enormous pressure upon the Court to decide in favor of the Newmans?

On September 6, 1890, the executor Raveley received from the Newmans one-half the purchase price for which he then pretended, as above stated, to sell to them Mr. Levinson's partnership interest in the firm of Newman & Levinson. The other half, namely, \$10,395.44, was paid to him by the Newmans between September 6, 1890, and February 25, 1891. But the fact that the executor had received money from the Newmans was kept secret. It was not reported to the Probate Court nor divulged to Mrs. Levinson, nor to either of her daughters, nor to me.

While the executor, on Ralph C. Harrison's advice, carefully concealed from Mrs. Levinson and her daughters the fact that he had received money for the estate; he did (also on Ralph C. Harrison's advice) what shows conclusively that the withholding of the money from Mrs. Levinson and her daughters was only to oppress them and subdue them by starvation. For, on Sept. 11, 1890, only five days after receiving the money, he secretly paid, out of that identical money (and on Ralph C. Harrison's advice), the creditor's claim of Daniel Meyer. This claim in truth amounted, with interest, to \$4,095.66; but so wanton were the executor and Mr. Harrison in their disregard of the interests of the estate that they actually gave \$4,222.00 in payment of it, an over-payment of \$126.33. It was thus that they treated the money received, but for the "beloved mother" of the deceased partner, who, according to his will was to have \$200 per month from his death—for her there was not a cent, only secrecy and the stress of penury.

On October 11, 1890, as attorney for Mrs. Levinson and her daughters, I filed in the Probate Court the petition, asking that the executor be directed to correct the inventory and appraisement filed by him as already stated so as to include the good will of the business. This was the petition of which I had spoken to Mr. Harrison and to the executor and to Mr. Eisner on July 26, 1890, as above stated. The purpose of it, as Mr. Harrison and the executor and Mr. Eisner all well knew, was to obtain from the Probate Court a ruling which could be used as a basis for arriving at some settlement with the Newmans. The petition contained a copy of the articles of partnership above mentioned and made the claim that the language of the articles did not exclude Mr. Levinson's estate from a share in the good will of the business. This petition also stated that at the time the articles of partnership were signed by Mr. Levinson, and for some time before that, he was sick of a disease which affected his mind and rendered him unable to transact business, that he was at the time under the care of physicians and by their advice was about to depart for Europe, that he was believed at that time by himself, by his physicians and by the Newmans to be incurable of the disease with which he was afflicted, that at that time Mr. Levinson had the utmost trust and confidence in the two Newman brothers, and that they had procured his signature to the articles for the purpose of advantage to themselves in case of his death, which was then expected, and that he was never cured of his disease, but continued to sink under it until his death. The executor, by Ralph C. Harrison, his attorney, and the two Newmans, by Reinstein & Eisner, as their attor-

neys, both filed demurrers to this petition, and those demurrers came on for hearing and were argued in the Probate Court in the early part of December, 1890.

The two Newmans, also, on November 20, 1890, by Reinstein & Eisner as their attorneys, served on me and filed in the Probate Court an answer to the petition last mentioned. No trial or hearing upon that answer was ever had, but it contained the following passage:

"And deny that said William J. Newman or said Benjamin Newman has not fully accounted to said executor of said estate for any and all moneys, interests and claims due to said estate from said William J. Newman or said Benjamin Newman, or either of them, and aver on the contrary that they have fully accounted for any and all claims, payments and sums due said estate in the manner set forth in said memorandum, in writing [the alleged partnership articles], and in this behalf said William J. Newman and said Benjamin Newman aver that after the appointment of said S. W. Raveley as the executor of the last will and testament of said John Levinson, deceased, said executor requested them (said William J. Newman and Benjamin Newman) to account to him for the interest of said decedent in said copartnership, and said William J. Newman and said Benjamin Newman did thereupon account to him and exhibit to him, said executor, all the books and assets of every kind belonging to said copartnership, and it appeared therefrom that the entire interest of said decedent in the assets of said copartnership amounted to the sum of \$20,790.80, and thereupon said William J. Newman and said Benjamin Newman elected and decided, under and in accordance with the provisions of said memorandum in writing, to purchase and pay for the

interest of said decedent in said copartnership, and thereupon executed to said S. W. Raveley, as executor aforesaid, their twelve certain promissory notes, bearing date the 26th day of February, 1890, payable at monthly intervals thereafter, each for the sum of \$1,752.57 $\frac{1}{3}$, said promissory notes aggregating the sum of \$20,790.80, in full payment and discharge of the interest of said decedent in said copartnership business, as the same had been ascertained and determined by the inventory and appraisement thereof, and in accordance with the provisions of said memorandum in writing."

This answer was not made until two and one-half months (seventy-five days) after the secret sale made by the executor on September 6, 1890. It did not tell the real transaction, or even its date. It did not even pretend to say that the Newmans had paid any money to the executor, or that he had received or accepted anything from them as a full payment or a full settlement, or that he had given them any writing, or that he had sold or even pretended to sell to them Mr. Levinson's interest in the partnership. Besides, as already stated, we had the promise of Mr. Harrison that no step should be taken in regard to the interest of the estate in the firm of Newman & Levinson without notice to me, and by the fact that no such notice was given we were assured that nothing had been done by the executor.

"Mr. Justice Harrison" Trying to Induce the Probate Court to Side With the Two Newmans.

When the demurrers of the executor and the two Newmans came on for hearing in the Probate Court early in December, 1890, as above stated, Ralph C.

Harrison had been elected Associate Justice of the Supreme Court of this State. He was, however, under his employment by the executor, still the attorney for Mr. Levinson's estate, and was in receipt of pay, every cent of which was necessarily to fall as an expense solely on Mrs. Levinson and her daughters. But on that hearing he, appearing as the attorney for the executor, made a strenuous argument against Mr. Levinson's estate and in favor of the two Newmans, strenuously urging the Judge of the Probate Court to rule that Mr. Levinson's estate was entitled to no share in the good will of the business. He also tried to strengthen his contention by filing a brief against the estate which he represented and in favor of the two Newmans. Mr. Eisner, appearing as an attorney for the two Newmans, told the Court that he rested his case upon the argument made by Mr. Harrison. The only argument made in favor of Mr. Levinson's estate was made by me. The matter so argued was in December, 1890, submitted to the Probate Court for decision. We waited for the decision till May 4, 1891, when the Probate Court overruled the two demurrers, deciding and declaring that the language of the articles of partnership did not preclude Mr. Levinson's estate from sharing in the good will of the business.

As already stated, Mr. Harrison took office as Associate Justice of the Supreme Court of this State at the beginning of January, 1891, for a term of twelve years. He had utterly disregarded his promise made to me in March, 1890, that I should be notified of any step to be taken in regard to the interest of Mr. Levinson in the firm of Newman & Levinson, except to use it as a cloak for deceit.

After Mr. Harrison had taken office as Associate Justice of the Supreme Court, it was understood that John R. Jarboe, who had been Mr. Harrison's partner, was attorney for the executor. And as soon as the decision of the Probate Court had been given on May 4, 1891, as just stated, I called on Mr. Jarboe, and said to him that since that decision had been given in favor of the estate, I trusted that there would be no more dispute as to the interest of the estate in the good will of the business, that Mrs. Levinson and her daughters were in need of money, none of them having received anything from the estate, and that I hoped that he would help bring about a settlement of the matter without delay. Mr. Jarboe replied that the decision of the Probate Court had not by any means settled the question, and that the decision had really not passed upon the question. He drew himself up and said to me, "Mr. Philbrook, I have always laid it down that upon the death of a partner the good will of the business belongs to the surviving partners." I replied that it was idle for him to seek to urge that view upon me, because I was familiar with the authorities, and they were all to the contrary. He then said, "Well, as for the trade-mark, it is of no value. We'll give that to you, and give you \$1,000 for the interest of the estate in the good will of the business." I thereupon replied, expostulating with him for speaking in that manner, telling him that he spoke as if he represented the Newmans, when he ought to be taking up for the estate; that I had never been able to understand how he and Mr. Harrison had taken up against the estate on this question. That I had previously expressed to Mr. Harrison my astonishment at his course in the

matter, and that I could not understand how he could speak as if he were acting for the Newmans. He replied, "I am not going to do anything about the matter that looks unprofessional, and I have just told Ben Newman that he must stop coming here. I have told him to go and employ Dr. Taylor as his attorney, and Dr. Taylor is now the attorney for the Newmans, the surviving partners. If you intend to talk any more about the matter of a settlement you had better go to Dr. Taylor."

On August 25, 1891, the executor, refusing to accept the decision of the Probate Court in favor of the estate, filed in that Court an answer to our petition asking for an increase in his inventory and appraisement. In that answer, though he did not divulge his secret sale of Mr. Levinson's interest in the firm to the Newmans on September 6, 1890, he did state that he had received money from them, his language being as follows:

"After my appointment as executor of the last will and testament of said John Levinson, deceased, I requested of the surviving members of said firm, viz., William J. Newman and Benjamin Newman, that they account to me for the interest of the decedent in the said partnership, and the said surviving members did thereupon account to me and exhibit to me the books of the said partnership and the assets thereof, and it appeared therefrom that the entire interest of the estate of said deceased in the assets of said partnership amounted to the sum of \$20,790.80 and no more.

"Thereafter, in accordance with the provisions of said articles of partnership, the said surviving partners executed to me, as the executor of said last will and testament, their twelve certain promissory notes, bearing date February 26, 1890, pay-

able at monthly intervals thereafter, each for the sum of \$1,732.57 $\frac{1}{3}$ (said promissory notes aggregating the sum of \$20,790.80), for and in consideration of the interest of the said decedent in the assets of said partnership, as the same had been ascertained and determined by the aforesaid inventory and appraisal thereof. Of said notes, all have been paid."

Finding that the executor had money in his possession, Mrs. Levinson and her daughters, on September 18, 1891, petitioned the Probate Court, by me as their attorney, that part of it be distributed to them.

While this petition of Mrs. Levinson and her daughters for a part of the money in the executor's hands was pending, Mr. Jarboe procured from me my consent to several continuances of the hearing of it, and offered to make no objection to the petition's being granted if I would have the legatees, my clients, execute some paper releasing the Newmans from all obligation to pay anything more to the estate. I refused to attempt to procure any release from the legatees, and told Mr. Jarboe that that was the very thing that we had been contesting about, as he well knew.

After the executor had thus delayed the matter as long as he could, he at last filed in the Probate Court on November 2, 1891, an answer to the petition last mentioned, claiming that the distribution of the money asked for was contrary to Mr. Levinson's will, and saying also:

"And further objects to distribution being made, upon the ground that the estate of said deceased is now involved in expensive litigation, which may possibly be taken on appeal to the Supreme Court of the State of California, and that it is impossible

to determine the amount of expense will be incurred in and about the said litigation, or in and about closing the estate.

“And that actions are pending in this Court for the purpose of causing the interest of the said John Levinson, deceased, in said partnership, at the time of his death, to be of other and greater value than said sum of \$20,790.88, which said actions are still undetermined, and that the said executor protests against any order of distribution being made herein, unless the parties interested in the estate and in the trusts created by the said will of said John Levinson, deceased, shall execute and file in this Court a release discharging him, the said executor, from all liability to account for the interest of said deceased in said partnership, as aforesaid, to any greater extent than the amount of \$20,790.88, which he admits that he had received therefor, or for any other or further sums of money which he shall receive from said William J. Newman and Benjamin Newman, if any, if it be adjudged in the litigation now pending that the interest of said deceased in said firm of partnership, at the time of his death, was of other or greater value than the said sum of \$20,790.88.

“And the said executor further protests against partial distribution of said estate being made, until the parties interested in the said estate and in the trusts created by the said will shall file in this Court a declaration in writing, approving of the sale of so much of the partnership interest of the said John Levinson, deceased, and the estate of said deceased as has already been made by this executor and paid for by said William J. Newman and Benjamin Newman.

“Wherefore, said executor prays that said petition of said petitioners be dismissed.”

The Struggle of the Newmans and the Executor to Subdue the Deceased Partner's Family by Subjecting Them to the Stress of Penury.

The hearing of this petition for part of the moneys in the executor's hands came on in the Probate Court on November 13, 1891. Not a particle of evidence was even then produced of the transfer that had been made by the executor to the Newmans on September 6, 1890. But E. R. Taylor and M. S. Eisner, the Newmans' attorneys, appeared in the role of attorneys for the executor, and argued against the legatees being allowed any money unless they would first execute to the Newmans a release of any further obligation to the estate. Mr. Eisner then, in the course of his argument, stated that the money had been received by the executor Raveley from the Newmans on a purchase by them of the interest of the estate in the partnership. I expressed surprise at his statement, and asked if any bill of sale had been made by the executor Raveley to the Newmans. Mr. Eisner said there had. I then asked if I might see it. Mr. Eisner replied, "Yes, if you will call at my office I will show it to you." I said to the Court, "There is nothing in the pleadings said about it, and the order ought to be made." The order was thereupon made directing the executor to pay Mrs. Levinson \$3,000, and \$3,000 to each of her two daughters. This is all the money that any of them has ever received from Mr. Levinson's estate.

Between Mr. Levinson's death and the time this order was made, the two Newmans had actually netted and divided between themselves out of Mr. Levinson's share in the profits in the firm a great deal more money than all they had paid to the executor, and every cent

that they had so divided between themselves and pocketed belonged to their dead partner's estate.

And it is a settled and familiar rule of law, which has been applied over and over again by the Supreme Court of this State for more than thirty years, that no person can recover money which he has paid voluntarily and with a knowledge of the facts. By virtue of this familiar rule the Newmans could not possibly have had a right to recover anything they had paid to the executor, and therefore could have had no honest ground to oppose the petition of Mrs. Levinson and her daughters asking the Probate Court to direct the executor to pay over to them a part of the money in his hands. Why, then, were M. S. Eisner and E. R. Taylor in the Probate Court trying to induce the Court to deny the petition? Why was the executor employing them, the Newmans' attorneys, to oppose that petition? The only possible answer is that the executor and the Newmans were confederates and were trying to starve the dead partner's family into submission.

This order for the executor to pay \$9,000 to Mrs. Levinson and her daughters was made in the presence of the attorneys for the Newmans and with the distinct and emphatic refusal of Mrs. Levinson and her daughters to release the Newmans from any claim whatever.

What was the purpose of the Newmans in opposing, in the name of the executor, the making of that order? *Solely* to keep up the siege of starvation upon the family of their deceased partner.

How was it that the executor allowed the Newmans to thus use his office? He did not legitimately represent the Newmans. Legitimately, he represented only Mrs. Levinson and her daughters. They were using

his name and his office, because he was their confederate in the wickedness in which they were engaged against their dead partner's family.

The Refusal to Disclose the Secret Transfer to the Two Newmans.

Immediately after that order had been made I called on Mr. Eisner at his office and asked to be shown the bill of sale which he had spoken of in the Probate Court on November 13, 1891, as just stated. He professed not to have it, saying that it had been mislaid or was somewhere else. I called on him again with the same result.

On Nov. 19, 1891, Mrs. Levinson and her daughters and I had an appointment with Mr. Raveley the executor, and Mr. Jarboe, his attorney, to meet at Mr. Jarboe's office at 2 o'clock and receive the payment of the \$9,000 decreed to these legatees on the partial distribution. We met in Mr. Jarboe's office accordingly. There were present, John R. Jarboe, Mr. Raveley the executor, Mrs. Fanny Levinson, her daughters Julia and Ada, and myself. After the money had been paid over and the respective receipts had been signed by the legatees and by myself as witness, I turned to the executor and said to him that on the previous Friday, in the Probate Court, when the petition for a partial distribution was being heard, Mr. Eisner had stated that he (the executor) had made to the two Newmans a bill of sale or some writing transferring to them the interest of Mr. Levinson's estate in the partnership—that Mr. Eisner had told me that he would let me see that paper—that I had called upon him to obtain an in-

spection of it, and had been put off. I then asked him in the presence of the persons just named, whether he had made to the Newmans any writing, and if so, to be informed what it was. He immediately replied that he had not made to the Newmans any writing whatever. But as he was saying this Mr. Jarboe sprang up, and with much emphasis told him not to tell us a word, saying, "Don't answer his question; don't tell him anything." Mr. Jarboe then turned to me and said that I had come with the legatees to receive payment of money, and that I had no right to bring up anything else than that payment of money. I replied that it was a very serious matter that we had lately been informed about—that we understood that the executor was bound to give to the persons interested in the estate information at any time as to what he was doing about the estate, and that it was proper for me to ask him the question. I then turned to the executor and again asked him the same question, saying, "Have you given the Newmans any paper writing?" He again said, "No, no." And as he did so, Mr. Jarboe again sprang up and said to him, with much excitement, "What are you saying? You gave the Newmans two writings." I then asked the executor if he could show me a copy of these writings—that the matter was important, and no doubt a copy had been kept. Mr. Jarboe said he did not know that any copy existed. I turned to the executor and asked him what he intended to do thereafter in regard to claiming from the Newmans an interest in the good will of the business. He replied that he would do whatever the Court ordered. I then told him that the Probate Court had already made a decision that the estate had an interest in the good

will of the business. He said, "No; that was not the decision." I then asked him what he intended to do about the matter of the good will. He said that he was in the hands of his attorney, Mr. Jarboe, and that he would do whatever his attorney told him to do; that throughout the administration of the estate he had done just what his attorney had told him to do. Mr. Jarboe then stated that he was to be very busy that afternoon; that we had come there to get money only, and asked me not to urge the matter any further; and thereupon we came away.

A few days afterward, I again called upon the executor and again asked him to tell me what transaction he had had with the Newmans, but he would tell me nothing.

The Executor Resigns Under Charges of Confederacy With the Two Newmans.

Thereupon on November 24, 1891, Mrs. Levinson and her daughters, by me as their attorney, filed in the Probate Court a petition charging that the executor had been and was in a conspiracy with the two Newmans to defraud Mr. Levinson's estate, and that he had been and still was the fraudulent tool of the two Newmans, and asked for his removal on that ground. On the filing of that petition the Probate Court on issuing its citation to the executor to show cause why he should not be removed, ordered him to give a bond. And it was the two Newmans that obtained for the executor the bond so required.

Shortly after the filing of the petition last mentioned, the executor sent to Mrs. Levinson and her daughters an offer to resign if they would allow him to do so. I

thereupon again demanded to be shown what papers he had given to the Newmans. He then sent me a copy of each of the two writings made by him on September 6, 1890, as above stated, professing to transfer Mr. Levinson's interest in the firm to the Newmans. This was subsequent to November 24, 1891, and was the first time Mrs. Levinson or either of her daughters or I had been allowed to know what the transaction was or its date. Mrs. Levinson and her daughters then allowed the executor to resign.

Of the moneys the executor Raveley had received from the Newmans he had retained as his commission or had paid away as debts and expenses, including payments to his attorneys, the sum of \$6,441.98, besides the \$9,000 he had paid to Mrs. Levinson and her daughters as above stated. To the administrator appointed in his place in January, 1892, he turned over the sum of \$6,254.97.*

The Suit for an Accounting.

The administrator brought suit against the two Newmans for an accounting, and to have the entire partnership affairs of the firm of Newman & Levinson settled and the proceeds divided between the estate of the deceased partner and the surviving partners according to their respective interests. This suit is the case mentioned on page 16 above. The complaint alleged that the firm had no articles of partnership.

The Newmans filed an answer to the complaint by Reinstein & Eisner and E. R. Taylor as their attor-

*NOTE.—The payment of the legacy of \$3,000 mentioned on p. 20 above and the costs of the accounting suit in the Superior Court alone absorbed \$4,896.40 of this sum. The costs of the appeals to the Supreme Court have absorbed more than all the rest.

neys. In the answer they alleged that the articles of partnership mentioned above had been executed by Mr. Levinson and William J. Newman and Benjamin Newman. The answer also alleged, as a defense, the transfer made by the executor on September 6, 1890, as above stated, and contained copies of the two papers then signed and delivered by the executor to the Newmans, each paper having at the end the name of Ralph C. Harrison as the only witness. Mr. Harrison was now one of the Associate Justices of the Supreme Court. But the answer admitted that the sum paid by the Newmans to the executor had been less by \$593.18 than what the inventory and appraisement made by them had shown was proper, and on that ground admitted that the plaintiff was entitled to recover \$593.18 and also \$69.22 as interest on that sum, *i. e.*, \$662.40 in all.

Upon that complaint and that answer the case was tried in the Superior Court of San Francisco. On the trial all the facts of the case stated above (except only what is said of The Southern Pacific Company) were proved clearly, plainly, fully and without contradiction. The attorneys who conducted the trial on the side of the two Newmans were E. R. Taylor and J. B. Reinstein. They introduced as evidence the originals of the two writings signed and delivered by the executor to the two Newmans on September 6, 1890, as above stated and raised and kept up profusely the cry, "It is in Judge Harrison's handwriting," with such effect that the Judge of the Superior Court immediately—without delaying a moment—ordered a judgment that Mr. Levinson's estate should not only have no accounting, but should recover nothing whatever from the

Newmans—not even so much as a cent of the \$662.40 which they admitted to be still due—and should pay the costs of a suit. The judgment was made and entered in January, 1893.

In the Superior Court the plaintiff moved that the decision be set aside and for a new trial. Before that motion could be brought to a hearing the evidence on the trial had to be written out, certified by the trial Judge and filed. The motion was at last heard in the Superior Court on April 27, 1894, by the same Judge who had ordered the judgment last mentioned, and was immediately denied.

**“The Opinion of the Trial Judge, Hon. W. T. Wallace,
Which Opinion is set Forth in the Record.”***

I regret the necessity of naming the Superior Court Judge, and of him and his decision as little as possible will here be said: partly because the law, by providing for an appeal, gave a remedy for his misconduct, and partly because his term of office has expired and he has again offered himself as a candidate and has been rejected by the votes of the people and beyond all reasonable doubt will never again occupy judicial office. But in the editorials in *The Record-Union* which it is necessary to quote and in the final decision of the case for the two Newmans he is named and his decision is referred to for the purpose of bolstering up the disbarment judgment and that final decision. It is therefore needful to name him here and to speak of his decision.

The Judge was Wm. T. Wallace; and he previously

* See the Appendix, p. 54, and also pp. 18, 23 and 36.

was a law partner of E. S. Pillsbury, the agent of The Southern Pacific Company, who in the Republican State Convention in 1890 managed the nomination of Ralph C. Harrison as Associate Justice of the Supreme Court.

The judicial reputation and the judicial record of Judge Wallace are far from spotless. In 1890 he sought from the Democratic State Convention the nomination for Chief Justice of the Supreme Court, and his failure to obtain the nomination was due to the fact that a weekly newspaper of San Francisco published him in the convention as a false and corrupt Judge. He did not even attempt to call his traducer to account. Among the lawyers of San Francisco he has the reputation of being able and dishonest. But, as Judge of the Superior Court, he on every opportunity played to the gallery, and in particular at every opportunity he posed as a would-be enemy of the corrupt and unpopular practices of The Southern Pacific Company, and he was diligently advertised as such by a prominent daily newspaper of San Francisco. By such means he obtained numerous admirers among the best people of the State, and particularly in San Francisco. It was because of that popularity, and for the purpose of using it to bolster the outrages hereinafter stated, that in the editorials in *The Record-Union* and in the final decision for the two Newmans by the Justices of the Supreme Court (hereinafter stated), he was named and his decision of the case referred to.

In deciding the case in the Superior Court, Judge Wallace gave a verbal opinion, and it was with much difficulty, and only by overcoming his resistance, that

I succeeded in having a copy of it made a part of the record on appeal.

A copy of that verbal opinion is in the Appendix (pp. 3-4) where it may be examined. It is nothing less than an outrage. It passes over the main points of the case without a word. It lays down a falsehood as the law, for, as every lawyer knows, and as every one who has gone through a common school arithmetic knows, it is *the law* that, where it has not been otherwise agreed between the partners, on the death of a partner, all the assets must be sold, the debts paid and the proceeds divided. It lays down falsehoods for the facts, for there was not so much as a word as *evidence* as to what or how much of the goods were inventoried and appraised by the Newmans. No person whatever testified "that according to the usual mercantile way of ascertaining what this old lady and her daughters ought to have had, a calculation on the basis of 65 per cent should be made," or "that such method is usual among merchants," or to any such effect; and even if there had been such testimony it would have been of no importance, for, as already mentioned, *the law* prescribes the rule. Judge Wallace's decision was the same as that of the corrupt judges in the reign of Charles the First, who, according to Clarendon, gave "judgment of law founded upon matter of fact, of which there was neither inquiry nor proof."*

The Case in the Supreme Court.

An appeal to the Supreme Court from a judgment can be taken only within a year from the entry of the

*Gneist, History of the English Constitution, Vol. 2, pp. 240-241.

judgment. From the judgment entered in January, 1893, as above stated, the plaintiff had filed an appeal to the Supreme Court in January, 1894. That appeal was taken only upon the complaint, the answer, the plaintiff's demurrer to the answer and the judgment, and did not show any of the evidence given on the trial. That appeal is in the case No. 15,731 on the Register of the Supreme Court.

In order to show the entire case to the Supreme Court it was necessary to appeal also from the order made April 27, 1894, as above stated, refusing to set aside the decision and allow a new trial, for it was only on an appeal from that order that the entire evidence could be certified to and filed in the Supreme Court, thus bringing the entire case before the Supreme Court. An appeal from that order was therefore taken in due time. The certified record, setting forth all the facts of the case as above stated, was thereupon filed in the Supreme Court. This is the case No. 15,857 on the Supreme Court Register, referred to on p. 16 of this paper.

An Appeal From the Probate Court:

It is necessary to a full statement of the case and to a full understanding of the articles in *The Record-Union*, shown in the Appendix*, to mention also another appeal—an appeal that had to be taken from the Probate Court.

The accounting suit of which a mock trial was had before Judge Wallace, as above stated, was being carried on in the name of an administrator of Mr. Levin-

* See the Appendix, pp. 23, 36.

son's estate, who had been appointed such by the Probate Court on the resignation of the executor. This administrator was a young lawyer whom I was assisting by giving him freely a place in my office, and giving him such business as I could. He had been appointed administrator on Mrs. Levinson's nomination, which she made on my suggestion. At his request two other lawyers, then practicing in San Francisco, had undertaken to assist on that trial. But, during the trial, that administrator and those two lawyers became so frightened by the threats which were continually being made by J. B. Reinstein, of ruin to them as attorneys if they persisted in carrying on a suit which so reflected upon a Justice of the Supreme Court, that they all three broke down, refused to go on, tried out of court to force a settlement offered by the Newmans—a settlement by which the Newmans were to pay the costs of the suit and the plaintiff's attorney's fees. Upon a refusal by Mrs. Levinson and her daughters and myself to accept such a settlement, they all three turned traitors, and did all they could to assist the Newmans to win the case. To go on with the suit it became necessary to remove the administrator. Soon we discovered that he had embezzled moneys of the estate. We, therefore, upon the ground of such embezzlement, had him suspended by the Probate Court, and Mr. Ira P. Rankin appointed special administrator in his place. Thereupon our embezzling and traitor administrator immediately resigned and filed in the Probate Court an account asking enormous allowances out of the estate on the ground of pretended expenditures in carrying on the suit and for commissions, and the two attorneys appeared with him and demanded a large fee. This

account was brought on for settlement and tried before Judge J. V. Coffey in the Probate Court, the same Judge who previously had invariably ruled in our favor, as above stated.

On the hearing of the account the suspended administrator and the two attorneys appearing with him, assisted by other attorneys whom they called in, justified their course by raising the outcry that the accounting suit was an attack upon a Justice of the Supreme Court, and that to carry on such a suit was outrageous. And here we found that, as soon as that cry was raised, we were outlaws in the Probate Court also. The Judge, J. V. Coffey, as soon as that defense was made, joined in its support, continually treated us with the grossest browbeating and insult, and deliberately tried to assist in plundering the estate of the small amount of money remaining in it. Three plain examples will show the extreme outrage of his conduct, and all three may be seen stated in the decision of the case afterward made by the Supreme Court Justices, even after denying a hearing of the appeal. Judge Coffey allowed the administrator an item of \$240 out of the estate as an expense paid by him to accountants for examining the books of Newman & Levinson, although we produced his own receipt stating, over his own signature, that the money with which he paid that item was furnished him for the purpose by Miss Ada Levinson, one of the daughters, out of her own personal funds, and he himself expressly admitted on oath in open court before Judge Coffey that the item was paid thus and not otherwise. *Judge J. V. Coffey heard that proof, that sworn admission, and then deliberately, over our protests, allowed him another \$240 out of the estate for that very*

item. He also deliberately allowed him \$50 for a witness fee of one witness for one day's attendance, though the law expressly limited such a fee to two dollars. He also, deliberately, and over our protests, allowed that suspended and resigning administrator full commissions for closing the administration of the estate, and in face of the settled law that no commission whatever can be allowed to a resigning administrator, no such commission being grantable until the final close of the entire administration of the estate. Such was the conduct of Judge Coffey in particulars where it was plain, deliberate, indefensible, brutal outrage. In every other particular his conduct in settling the account was of the same character. The three particulars above stated are but examples. They may be seen, where their indefensible character is conceded, in the decision of the Supreme Court, a decision made after denying to Mrs. Levinson and her daughters a hearing of the appeal.*

We asked the Probate Court for a reconsideration of the order, thus settling that account. We were insolently refused. We were met by the personality of Ralph C. Harrison, a Justice of the Supreme Court, and from the time we were thus met Judge Coffey would treat Mrs. Levinson and her daughters only as outlaws. And during all the hearing of the account by Judge Coffey, and on every one of the numerous days to which it was from time to time continued, one of the two Newmans was present in the Probate Court—watching with malicious smiles the effect of their plot to corrupt the courts against their dead partner's helpless family.

**Estate of Levinson*, 108 Cal., 450.

From the order of the Probate Court thus settling the suspended administrator's account, Mrs. Levinson and her daughters appealed to the Supreme Court.

The Justices of the Supreme Court as Corrupt Agents of The Southern Pacific Company.

In pages 31-33 above, certain facts are mentioned indicating a connection between five of the Justices and The Southern Pacific Company. Other facts must now be mentioned.

In February, 1893, Wm. F. Fitzgerald, a carpet bagger office seeker, became, by appointment of the Governor, a Justice of the Supreme Court, for the remainder of an unexpired term which was to end January 5, 1895. In November, 1894, he was elected Attorney-General of the State for a term of four years to begin January 7, 1895.

In the latter part of April, 1894, Wm. C. Van Fleet, a person who had connected himself by marriage with the family of some of the principal members of The Southern Pacific Company, was appointed by the Governor a Justice of the Supreme Court for part of the remainder of an unexpired term, a part which was to end with the election of November, 1894. In *The Record-Union* of April 30, 1894, a long eulogistic editorial appeared under the caption, "A Good Appointment," commending his appointment. In November, 1894, he was elected to the same office for the remainder of the same unexpired term, thus extending his term to January, 1899.

1. An Instance in Proof of Such Agency. The Corrupt Mutilation of a Record of the Supreme Court—a Mutilation for The Southern Pacific Company.

On August 16, 1893, a case between Ezekiel K. Heckman as plaintiff and John A. Swett and others as defendants was decided by the Supreme Court of California. The decision was drawn up by the Commissioners of the Court and thereupon submitted to and adopted by the Justices. The case involved a question of title to land on the sea coast of the State and below ordinary high water mark and under a grant from the State. The decision was made upon a submission of the case upon printed briefs and without oral argument or any argument except that contained in those briefs. One of the grounds urged in the plaintiff's brief as a point of law was that the title to land on the sea coast below ordinary high water mark is held by the State in trust for the public and that the State has no power to convey any such land to a private person. The decision, responding to that contention, stated expressly and at length and with citation of authorities that the State of California holds in trust for the public all its lands situated on the sea coast and below ordinary high water mark, and has no power to convey any such land to a private person. As no rehearing was granted or asked for, the decision was final and stood as an authority to be followed in subsequent decisions.

But it happened that ten days after that decision was made the City of Oakland began a suit in the Superior Court of Alameda County against the Oakland Water Front Company to quiet title to extensive and very valuable lands bordering on the bay of San Francisco, *i. e.*, on the sea coast and below ordinary

high water mark, and constituting the water front of that city. The Oakland Water Front Company was then, as it still is, owned by the principal members of The Southern Pacific Company, and claimed the title to all those lands under a purported grant from the State. While the suit was in progress and before it came to trial, the Justices of the Supreme Court, under color of their statutory power to publish reports of the decisions of the Supreme Court as authorities to be followed in subsequent decisions, published in March, 1894, a report of the decision of the case of *Heckman vs. Swett*, above mentioned. In doing so they mutilated it in the interest of the proprietors of The Southern Pacific Company. The mutilation consisted in cutting out all that part of the decision holding that the State has no power to grant such lands to a private person, falsely making the decision as so published appear as if no such ground or point of law had been decided. The decision as it was actually made may be seen in Volume 33 of the Pacific Reporter at page 1099. The decision as mutilated may be seen in Volume 99 of the California Reports at page 303. The Justices who made the mutilation were William H. Beatty, the Chief Justice, and Ralph C. Harrison, T. B. McFarland, C. H. Garoutte, W. C. Van Fleet, William F. Fitzgerald and John J. DeHaven, Associate Justices. The Justice who, in particular, gave to the reporter the order for the mutilation was Ralph C. Harrison, and the reporter, (Carter P. Pomeroy) so testified in the Superior Court of Alameda County on the trial in 1894 of the water front suit above mentioned.

And afterward the suit (above mentioned) of the

City of Oakland against the Oakland Water Front Company was appealed to the Supreme Court and was there decided in September, 1897, in a decision drawn up by Wm. H. Beatty, the Chief Justice, a decision declaring that water front of the City of Oakland—land on the sea coast and below high water mark—to be the property of the Oakland Water Front Company, by virtue of its purported grant from the State, and making no mention of the case of *Heckman vs. Swett*, or of the rule of law there settled. This decision of the Oakland Water Front Case may be seen in Vol. 118, Cal. Reports, at p. 160.

2. Another Instance. The Notorious Decision in the Case of Hunt vs. Ward.

In July, 1862, the United States Congress passed an act loaning bonds of the United States to the amount of many millions of dollars to the Central Pacific Railroad Company to aid in the building of the railroad, and upon the condition that the company should repay the bonds so loaned, with the interest carried by them, at the end of thirty years after receiving the bonds so loaned. Under that act the Central Pacific Railroad Company received from the United States, in the years 1865 to 1869, such bonds to the amount of many millions of dollars, to be paid for at various times from 1895 to 1899. At the beginning of 1893 the amount of that debt of the Central Pacific Railroad Company to the United States was upwards of sixty million dollars, and the corporation was insolvent. By certain provisions of the Constitution and statutes of California stockholders of corporations are primarily

liable for the debts of the corporation—provisions under which the stockholders of the Central Pacific Railroad Company were liable to be sued by the United States, in the United States courts, for that debt. The stockholders thus liable were the principal members of The Southern Pacific Company. But in the United States courts it is the established rule to follow the decisions of the Supreme Court of a State in determining what is the constitution or law of the State.

It was under such circumstances that in October, 1893, the Justices of the Supreme Court of California, made the outrageously false and notorious decision of the case of *Hunt vs. Ward*, in which they ruled with outrageous falsehood that the meaning and effect of Section 359 of the Code of Civil Procedure of California was that stockholders of corporations are not liable for any debt of the corporation unless such debt falls due within three years from the time when it was contracted. And in March, 1894, they reported that decision in Volume 99 of the California Reports as an authority. A review of the decision may be seen in *The American Law Review* (Vol. 28, p. 907 and Vol. 29, p. 109), where it is declared that the true meaning of the statute was shown to the court but that "the court slurred it over in a disgraceful manner," and where the decision is characterized by such expressions as "a stolid misinterpretation of the ordinary sense of the statute," "a palpable misreading of a statute," "absolutely novel and against the plain letter of the constitution," "the statute is deliberately garbled," and "a court which can render such decision is not a benefaction but a calamity."

And afterwards, in a suit brought in March, 1895,

in the United States Circuit Court for the Northern District of California, by the United States against the executrix of Leland Stanford, one of those stockholders, to recover upwards of fifteen million dollars, his share of the debt of the Central Pacific Railroad Company, that decision of *Hunt vs. Ward* was set up as a defense. The case was, however, decided against the United States upon another ground.

The notorious decision of *Hunt vs. Ward* was written by the Justice, T. B. McFarland, and was concurred in by Wm. H. Beatty, the Chief Justice, and by the Justices Ralph C. Harrison, C. H. Garoutte, Wm. F. Fitzgerald and John J. De Haven. None of the Justices dissented.

3. Another Instance. The Decision in the Estate of Catherine M. Garcelon.

At the California State election in November 1894, a board of three Railroad Commissioners was elected, two Democrats and one Republican. The two Democrats were elected upon the party platform which pledged them to make a substantial reduction of the freight charges upon the railroads of The Southern Pacific Company throughout the State. As the two who had been elected upon that platform constituted a majority of the Board, their election made it reasonably certain that such a reduction would presently be attempted. It, therefore, immediately became a chief object of The Southern Pacific Company to defeat any such reduction, and to do so in such a way as to hoodwink the people and make them believe that it was done fairly.

The obvious means by which any attempt to make such reduction in the charges for carrying freight upon railroads might be defeated would be a suit in the United States Circuit Court at San Francisco by The Southern Pacific Company against the Board of Railroad Commissioners for an injunction. To handle such a suit effectively it would be necessary for The Southern Pacific Company to own and control the attorneys who should represent the Board of Railroad Commissioners, that is, the people of the State. Now, at the election in 1894, Wm. F. Fitzgerald, whose term as Associate Justice of the State Supreme Court was to expire on January 5, 1895, was elected Attorney-General of the State for a term of four years to begin January 7, 1895. He was a political adventurer, and a pliant tool of The Southern Pacific Company. If the injunction suit should be resorted to, he, as the Attorney-General of California, would direct and control the defense, and would also choose such other attorneys as might be employed to assist in that defense. In making such choice he could be relied upon to give effect to the wishes of The Southern Pacific Company, but what was wanted was that he should choose as his associate counsel for the defense of the injunction suit some attorney who would be thought by the people to be an efficient and faithful champion of their rights, and yet in whose mouth The Southern Pacific Company would have a sure curb and bit by which, without its being seen or known by the people, they could control him with absolute certainty.

An attorney who was among the foremost of those desirable in such a role was W. W. Foote. Some years previously he had been a member of the Board

of Railroad Commissioners of California, where, as he was the democratic minority in the Board, he had the opportunity, without doing any harm to The Southern Pacific Company, to exhibit himself to the people of the State as the one member of the Board who would effect a substantial reduction of fares and freights if he only could. Of that opportunity he fully availed himself and thus gained with the people of the entire State a reputation of being the enemy of The Southern Pacific Company. Besides, he was, as apparently he still is, a pet of *The Examiner*, a newspaper which for many years has professed to be the champion of the people against the exactions and tyranny of The Southern Pacific Company and their allies. There was to be sure, a far abler attorney in San Francisco, D. M. Delmas, a genuine opponent of The Southern Pacific Company, toward whom they apparently cherished an irreconcilable aversion. But W. W. Foote was an attorney who, if he should be chosen as a representative of the people to defend against the injunction suit, could be held up before the people as their efficient and genuine champion. And in a case (*Estate of Catherine M. Garcelon*) which was then pending in the Supreme Court of California and was about to be decided, the opportunity was at hand where The Southern Pacific Company, through their corrupt agents, who as Chief Justice and Associate Justices composed the Court, to make just the required bit and curb and bridle for W. W. Foote. The opportunity was as follows:

In August, 1890, Dr. Samuel Merritt of Oakland, California, died leaving an estate of upwards of two million dollars in value. His only heirs were his sister, Catherine M. Garcelon and his two nephews,

James P. and Frederick A. Merritt, the sons of his deceased brother. Catherine M. Garcelon was then a feeble old woman seventy-six years of age. She had never had a child. For years she had been Dr. Merritt's pensioner and dependent and lived with him in his home. The two nephews were then, as they always have been, extremely simple-minded persons always capable of being controlled as easily and absolutely as if they were children, by any one representing himself as their friend and having their confidence.

Upon Dr. Merritt's death there was found among his papers a will which had been made many years previously. The will gave almost his entire estate to his sister the aged and feeble Catherine M. Garcelon and cut off his two nephews with a trifling pittance. The will was straightway presented to the probate department of the Superior Court of the State for Alameda County and was without opposition admitted to probate as Dr. Samuel Merritt's last will.

For several years before Dr. Merritt's death, one Stephen W. Purington, an old bachelor relative of Dr. Merritt and his sister, lived with them in Oakland and was Dr. Merritt's confidential agent. This Stephen W. Purington cherished an inveterate hatred of the two nephews. From the time of Dr. Merritt's death he continued to live in the house with Catherine M. Garcelon, as her business manager.

If there had been no will the two nephews, known as the "Merritt boys" would have been entitled to one half of the estate. And, in fact, their aunt, Catherine M. Garcelon was willing to give them one half of the estate and would probably have done so if they had

been allowed to see her. But they were kept from her and were induced to employ W. W. Foote as their attorney.

As neither of the Merritt boys had any property nor any prospect of obtaining any property except his share of the estate left by their uncle, Dr. Merritt, W. W. Foote immediately obtained from them a contract by which they agreed to give him one fourth of anything he could obtain for them out of that estate, whether it should be obtained by contesting the will or by compromise.

Having obtained that contract, W. W. Foote, with the help of confederates, had the Merritt boys sent immediately to Sissons in the northern part of California and there made drunk and kept drunk until he could complete the terms for selling them to their enemy.

Before the Merritt boys thus fell into the hands of W. W. Foote, one of his friends John A. Stanly, known as "Judge Stanly," a shrewd, cunning and unscrupulous attorney who for many years had been a near neighbor of Dr. Samuel Merritt and his aged sister, and who was indebted to Dr. Merritt in a large sum, became the confidential attorney of Catherine M. Garcelon and with the assistance of Stephen W. Purington, obtained a complete ascendancy over her. As soon as W. W. Foote had obtained the contract, just mentioned, from the Merritt boys, the two friends, W. W. Foote and Judge Stanly met (in November, 1890), and W. W. Foote then, for a bribe of \$125,000 out of the estate left by Dr. Merritt, sold his clients, the two Merritt boys, and delivered them bound hand and foot, to Judge Stanly. This was arranged as follows:

A "compromise" between the aged Catherine M. Garcelon and the two nephews was contrived, by the terms of which the two nephews were to sign papers agreeing never to claim anything as heirs or heir of their aunt, Catherine M. Garcelon and never to contest or question any disposition of property that any one might obtain from her and never to contest or question the validity of any paper in the form of a will which she might leave after death. In return, certain property, the least valuable parts of the estate left by Dr. Samuel Merritt — parts of the estate which had been appraised at the value of \$375,000, and much of which was unproductive—were to be conveyed to a trustee, who should hold it and care for it, and manage it in whatever way he should choose and pay its net income monthly in equal shares to the two Merritt boys as long as they should live; but the deed of trust was to contain a provision that if either of them should at any time contest or question the validity of any disposition of property which their aunt, Catherine M. Garcelon, might make, or the validity of any paper purporting to be executed by her either as a conveyance of property in her life time, or as her will—that such act on the part of either of the nephews should be a forfeiture of the rights of both to any and every part of the property of the trust, and that the property so forfeited should then go to those whom she might name as residuary devisees in her will. In addition to the property so to be placed in trust, the sum of \$125,000 out of the estate left by Dr. Merritt was to be paid absolutely and its payment to be witnessed by receipts so drawn as to make it appear that the \$125,000 was paid to the two nephews. But in actual fact this

\$125,000 was to be paid to W. W. Foote, under color of its being his contingent fee of one-fourth of what he should recover for the Merritt boys as above mentioned.

That "compromise" was secretly arranged in November, 1890, between Judge Stanly and W. W. Foote, and took but a few days in its preparation. The papers were drawn up by Judge Stanly. As soon as they were ready, W. W. Foote had the two nephews brought from Sissons, had them taken on November 14, 1890, direct from their journey, to his office, and had them then and there sign the papers. The trust deed which had been agreed upon was signed by Catherine M. Garcelon and was made to one Knowles as trustee, and the property embraced in it was afterward known as the Knowles trust. W. W. Foote received the \$125,000 in money. Thus did W. W. Foote, for a bribe of \$125,000, sell his clients James P. and Frederick A. Merritt and deliver them bound hand and foot to their cunning and cruel enemy, Judge Stanly.

The great accession of wealth thus acquired by W. W. Foote was presently well known to many persons in San Francisco and Oakland. And, as the Merritt boys would talk and did talk, the means by which he had acquired it soon became known to many persons. In 1892 I myself talked it all over with Wm. F. Herrin, who shortly afterward became the Chief Counsel of The Southern Pacific Company.

As soon as Judge Stanly had thus obtained from the Merritt boys their signatures to those papers which purported to take from each of them the capacity to be an heir to Catherine M. Garcelon, he proceeded to have her convey to himself and Stephen W. Purington and

the survivor of them, as trustees, the remainder of her property except only a trifling portion. Stephen W. Purington, as well as Catherine M. Garcelon, was then old and about to die (he died in September, 1892), so that it was in fact Judge Stanly himself and he alone who, as trustee, thus obtained her property. The property he thus obtained from her was the cream of the estate which had been left by Dr. Merritt, and was about one and a quarter million dollars in value. Under cover of the trust he also secretly obtained from her large sums of money for himself, one item alone being \$25,000. By the terms of the trust deed, which he had thus had her execute to him, sums of money were given to almost every one who was acquainted with her, thus in substance bribing them to be, in case of any contest of the validity of the transaction, witnesses for Judge Stanly. He also drew up for her a will, and had her execute it as a will—a will in which the two nephews were cut off with the gift of a picture to each, and in which two persons, both of whom were beneficiaries in the trust deed made by her to Judge Stanly, were made her residuary legatees and devisees, and as such were directed to watch for any ground of forfeiture of the Knowles trust property, and, in case of any such ground arising, to claim and recover all that property.

Catherine M. Garcelon died December 29, 1891, and on February 1, 1892, Judge Stanly had her will last mentioned admitted to probate in the Superior Court of Alameda County. In September, 1892, James P. Merritt, one of the nephews, filed a contest of it, claiming to be, as he of course was, one of her two heirs at law. But he was still so surrounded by and in the power of the friends or confederates of W. W. Foote that it was im-

possible for him to show to the court that he had been betrayed as above stated. One of Judge Stanly's attorneys appeared, and, as attorney for the residuary legatees, resisted the contest upon the ground that the legal effect of the papers which the two Merritt boys had signed on the "compromise," as above stated, was such as to destroy the capacity of each of them to become her heir. Upon that contention the case was taken to the Supreme Court of California.

Here, then, was the opportunity—an opportunity well understood by that accomplished Machiavel Wm. F. Herrin, the Chief Counsel of The Southern Pacific Company—to make an effective curb and bit and bridle for the mouth of W. W. Foote. If the Supreme Court should rule that the legal effect of the papers which he had induced his clients the Merritt boys to sign was not such as to cut them off from being the heirs of Catherine M. Garcelon, then, although he had obtained an enormous fee for but a few weeks work, still he had not actually sold his clients to their enemy. If the Supreme Court should rule that by signing those papers the two Merritt boys forfeited their heirship, then W. W. Foote was clearly a traitor and could be by The Southern Pacific Company safely published as such in all the newspapers of California whenever they should see fit to do so.

And accordingly, on December 1, 1894, the Supreme Court of California, in a decision drawn up by the Associate Justice John J. DeHaven, and concurred in by all the other Justices—a decision full of bias and trickery, ruled that the legal effect of the papers so signed by the Merritt boys was such as to destroy the capacity of either of them to become an heir of Catherine M.

Garcelon and that therefore James P. Merritt had no right to set up any contest of the will.*

This was the bit and curb and bridle prepared for W. W. Foote. How effective it was may be seen from a simple test made by me and stated in Chapter VII below. By only putting my hand upon it, I alone and against all odds instantly put W. W. Foote *hors de combat*, as there shown. What, then, could not the mighty Southern Pacific Company do with him?

To return to the contemplated reduction of railroad charges for carrying freight in California. In September, 1895, the Board of Railroad Commissioners, after a long investigation, adopted a resolution making a reduction of eight per cent. upon the rates for carrying grain and another resolution announcing their intention to make a general reduction of 25 per cent. upon all charges of The Southern Pacific Company for carrying freight within the State. Thereupon The Southern Pacific Company commenced its injunction suit in the United States Circuit Court in San Francisco, one of their attorneys in the case being the same E. S. Pillsbury who is several times mentioned in these pages. Wm. F. Fitzgerald, as the Attorney-General of California, took charge of the defense. The Board of Railroad Commissioners adopted a resolution requesting the employment of D. M. Delmas to assist in the defense. The Attorney-General refused to comply with the request, but instead chose as his associate counsel Robert Y. Hayne (whose character is shown a few pages further on) and W. W. Foote. In actual fact every attorney who appeared in the suit ostensibly against The Southern Pacific Company

* *Estate of Garcelon*, 104 Cal., 571.

was owned and controlled absolutely by The Southern Pacific Company. As soon as the suit was commenced, a preliminary injunction was procured from the Court forbidding any reduction in the charges of The Southern Pacific Company until the final determination of the suit. Then began and was long kept up a great pretense of a legal contest—long arguments in the United States Circuit Court, long speeches of Wm. F. Fitzgerald, Robert Y. Hayne and W. W. Foote, which were at great length published and bragged about in *The Examiner*. In 1897, the Legislature of California was induced to pass a bill, which the Governor (James H. Budd) promptly approved, by which the State of California paid to Robert Y. Hayne and W. W. Foote \$20,000 for their services in the suit. But the injunction was kept in force until the weeks had become months and the months years, and until, by means of the State election on November 8, 1898, The Southern Pacific Company foisted a Board of Railroad Commissioners of their own selection upon the State of California. Thereupon, having no more use for the injunction suit, they dismissed it in May, 1899, *functus officio*.

If at any time in September or October, 1890, James P. and Frederick A. Merritt had called upon their aunt, Catherine M. Garcelon, they could have received from her freely their full rights as heirs of their uncle, Dr. Merritt, and, by virtue of such rights, a share of about one million dollars in value out of the estate which he had left, and within less than a year and a half later they might have inherited property of about another million dollars in value to be left by her. But, instead, they fell into the hands of W. W. Foote; and W. W.

Foote, dragging them with him, fell into the hands of The Southern Pacific Company. Here were two citizens, little dreaming who were the real authors of their fate, despoiled of a great inheritance, to strengthen the Machiavellian net of The Southern Pacific Company.

The foregoing instances are but examples of what was then and ever since has been going on in the Supreme Court of California. It was to such unspeakable scoundrels, traitors to the most sacred of all public trusts, that, in ignorance of their actual character, we were at great labor and at heavy expense appealing for justice.

The Plaintiff's Brief in the Supreme Court.

As the plaintiff's attorney in the suit I was required by the rules of the Supreme Court to file a printed argument, stating the grounds on which the administrator of Mr. Levinson's estate and the deceased partner's family represented by him claimed to be entitled to relief against the two Newmans. I complied by filing on November 30, 1894, an elaborate argument or brief setting forth and elucidating the case fully, clearly, and with the most scrupulous care, point by point. One branch of the argument was devoted to an exposition of the fraudulent confederacy of the Newmans with Ralph C. Harrison and the executor; another was devoted to showing that the secret transaction of September 6, 1890, was illegal and void under the rule of law applied and illustrated in deciding the case of Egerton vs. Earl Brownlow, 4 H. L. C. 235. On both these points the brief was exceedingly plain

spoken and the language criminatory, as any proper discussion of that branch of the case had to be.

The brief thus filed was not a merely voluntary production. The attorney had no option. On the contrary, a brief was absolutely required by the rules of the Supreme Court, and by its settled practice as well, as a condition upon which the right to a consideration of the appeal depended.

The brief thus filed consists of 441 printed pages. It covers every point of the case in a most orderly manner. In every point that could possibly arise in the case, it sets forth the facts and the law with the most painstaking fidelity and fullness and clearness. It is profuse in citation of the statutes and the decisions of the Courts relating to the various points of law involved, giving the language of the Judges in deciding the particular points referred to. The utmost pains was taken to cite only such decisions as were of unquestionable authority and were directly in point. The facts and the law and the illustrations drawn from decisions are there blended and united by the most careful reason and logic into a clear and harmonious whole, so that no reader of the brief could possibly make any honest mistake about the case. In parts it is an exceedingly full, true and elaborate treatise on partnership law, and on important branches of the law of contracts. Any lawyer or any author accustomed to such work, will see from an examination of the brief, that it could not have been produced without many months of hard, unremitting study and thought and toil. Merely to supervise the printing of such a work is a long and great labor. To any lawyer of California acquainted with preparing briefs for the

Supreme Court, it is well known that such a brief can not be printed without an expense, for the printing alone, of nearly \$400. In every particular, in every detail, and throughout, the brief was most strictly truthful. It was a great and most elaborate effort. It is the fullest proof that its author was devoted to winning justice for his clients by truth and by truth alone. That brief may challenge the highest approval of honest and intelligent men and lawyers throughout the world.

Some conception of the extreme care, the fidelity and great labor with which the brief was prepared may be seen from the following particulars: There were cited or quoted in it 156 volumes of law books and 140 judicial decisions. Under the various ^{new} decisions of the *divis* argument there were 226 citations of law authorities, and 185 quotations from judicial decisions, text books of law and the codes of California. The brief contained also 190 quotations from the evidence in the record, and 173 citations of the record besides the passages quoted. It also contained 235 cross references and five references to passages in the brief which had been filed for the two Newmans on the appeal which had been previously taken from the judgment as above stated. The briefs which I had prepared for Mrs. Levinson and her daughters and filed in the Supreme Court on each of the two other appeals were also unusually elaborate.

The brief had been prepared with very extreme care and elaboration, and with unsparing pains. So gross and outrageous was the denial of justice which we had met in the Superior Court, so triumphant there was the plot of Justice Harrison, the two Newmans and

their confederates that I had determined to have the case so presented in the brief to be filed in the Supreme Court that the justice of the case would be manifest and unavoidable and unanswerable from every possible point of view. I was strengthened in the resolve from the fact that in the brief which the two Newmans by their attorneys had filed in the Supreme Court against the appeal from the judgment they had already with brazen impudence set up their corrupt plot to influence the Supreme Court. It had, therefore, become absolutely necessary to exhibit their plot in its true character. I, therefore, prepared the brief as I had resolved to do, and, as a part of it, exhibited properly the corrupt and wicked contrivance of Justice Harrison, the two Newmans and their confederates.

A feature of the brief worthy of particular notice is the complete proof which it furnishes that its author was utterly unaware that *he* was incurring any danger. This may be seen in the very sentences quoted in the disbarment judgment, even with the shameful garbling to which they are there subjected. It was of course to be assumed that Justice Harrison would not sit in the case. The language of the brief is full and abundant proof that its author had a supremely innocent confidence that the Justices who would actually take part in the decision would be honest men, and that they would be moved by the feelings of honest men. He was utterly unsuspecting that they were in fact false, arbitrary, corrupt judges, and corrupt agents and tools of the gigantic combination of corporations called The Southern Pacific Company, and their allies, a powerful and unscrupulous tyranny, holding the State in their grasp, and engaged in overriding the constitution and

laws, in absorbing the wealth of the people, and grinding them down to slavery.

Among the grounds of the case in which the brief was filed—grounds which were stated and argued in the brief—were the following:

(1) That, by reason of the mental condition of Mr. Levinson when the partnership articles were signed, and the conduct of the two Newmans, the partnership articles were not binding on Mr. Levinson, and that there were therefore no partnership articles of the firm. This was a turning point in the case, for the secret transfer made by the executor to the Newmans on September 6, 1890, could be upheld, if at all, only because authorized by the alleged partnership articles.

(2) Another ground was that the document produced by the Newmans as the articles of partnership, failed to state any price or any means of arriving at a price for which, after Mr. Levinson's death, they might take his interest in the firm, and that for this reason the document was not a contract and did not authorize them to take their deceased partner's interest or any transfer of it to them.

(3) Still another ground was that the inventory and appraisement made by the Newmans was never accepted by the dead partner's family as correct in any particular.

(4) Another ground urged for the plaintiff was that in respect to that transfer, the executor and Ralph C. Harrison were the fraudulent confederates of the two Newmans.

(5) Another ground was placed upon the rule of law, which was applied and illustrated with remarkable

clearness by the English House of Lords in 1853 in the case of *Egerton vs. Earl Brownlow* 4 H. L. C. 235, and which may be fairly stated thus: If parties, anticipating that a certain matter may possibly come before a tribunal for a decision, and wishing that, in case such a contingency should happen, the decision should be in their favor, so arrange the matter that the tribunal cannot decide it contrary to their wishes, without great and special injury to a person standing in a position of near and close friendship to the tribunal, the fact that they so arrange the matter is a contrivance to put an "embarrassment," a "pressure" upon that tribunal to influence that decision improperly; and that for that reason the transaction so contrived is void on the ground of "public policy." We had seen the foul contrivance so triumph in the Superior Court as to give the Newmans even the \$662.40 which they avowed belonged to their dead partner's estate. We had seen the villainous scheme make actual outlaws of Mrs. Levinson and her daughters in the Probate Department of the Superior Court. As already stated, it had already been set up, in the brief filed for the Newmans on the appeal from the judgment, to be used in the same way in the Supreme Court. It was likely to be worked with even greater effect in the Supreme Court unless the Justices should not only be honest men, but should see plainly the real character of the villainous scheme. The brief cited the ruling in *Egerton vs. Earl Brownlow*, just stated, and asked for an application of the rule of law there applied, that any transaction that involves an attempt to put an improper influence upon official action is illegal and void. The brief urged that the principle was of especial importance in

respect to courts of justice, and stated the well-known ground of the principle, namely, that unless such attempts are held illegal, courts of justice may be corrupted—no particular court was referred to, nor any particular case; only the general truth was stated. And since Mr. Harrison had become a most intimate friend and daily close associate of long standing with the Justices by whom the case would have to be decided, and almost identified with them—the very situation which he and his confederates had foreseen and for which they had laid their plan of corruption—the brief sought to caution them against the wrongful influence so contrived.

The decision in the case of *Egerton v. Earl Brownlow*, 4 H. L. C. 235, was that certain provisions in a will were unlawful because they embodied just such a corrupt contrivance. The case was as follows: The testator had died in 1823, leaving an estate of two million pounds in value. He had cherished a wish to have the English Sovereign create a dukedom or marquise of Bridgewater and bestow it upon a member of his family, and to have the bulk of his fortune go to support the desired dignity. In his will he gave his estate to be held by trustees until certain branches of his family should have enjoyed a support out of its income, and then to one Lord Alford, a relative of the testator. This Lord Alford already held one of the lower dignities in the English Peerage, and at the testator's death was a child of twelve years. The two provisions of the will were, first, that if before the end of five years after the estate should come to Lord Alford he did not become Duke or Marquis of Bridgewater, the estate should be taken from him and go to another

branch of the testator's family ; and, second, that if Lord Alford should not become Duke or Marquis of Bridgewater, the estate should not go to his heir, but to a certain distant branch of the family. The will also provided for trustees to have its provisions fulfilled. Lord Alford died in 1851, and no dukedom or marquise of Bridgewater was ever created or even asked for. The House of Lords decided that the two provisions in the will were illegal and void because they constituted a scheme on the part of the testator to put a corrupting pressure upon the English Sovereign to create a dukedom or marquise of Bridgewater and bestow it upon Lord Alford.

The House of Lords based its decision on the fact that a dignity in the English Peerage ought to be created and bestowed solely from motives of the public good and of merit and merit alone in the individual to be promoted, that Lord Alford (and, after his death, his heir) as a member of the Peerage was likely to be on terms of intimacy and friendship with the Sovereign, that the Sovereign would therefore be likely to feel a desire to save Lord Alford (or his heir, as the case might be) from the danger of losing an estate worth two million pounds, and that the two provisions of the will were therefore a cunning device of the testator to put upon the English Sovereign an improper influence to create and bestow a desired dignity, and were "an indignity, an insult" to the office of the Sovereign. The House of Lords decided the case upon a well-settled principle of law, namely, that any transaction which involves an attempt to put an improper influence upon official action is illegal and void. In deciding that case the House of Lords used strong and

criminatory language, saying, among other things:

By the Lord Chief Baron (pp. 153, 154):

"It was the object * * of the testator by this condition to endeavor to obtain a renewal of the peerage in his family. * * * With this view he created this strong, powerful and dangerous pecuniary interest to obtain the peerage—an interest which might very possibly lead to unworthy attempts to obtain it. He prescribed the end and he furnished the means, and he set no limit or bounds to the use of them; and it is impossible, I think, to doubt, that he intended this condition to operate upon the mind of the Sovereign or the minds of those who advise the Sovereign (and expected it would or might do so), to grant the peerage by reason or on account of the conditions, and from motives other than those which alone ought to operate, viz: the public good, and the merits of the individual to be promoted, and the cause of his promotion. I am of opinion that it was not competent to the testator so to deal with his property."

By Lord Lyndhurst (p. 163):

"It is admitted that any contract or engagement having a tendency, however slight, to affect the administration of justice, is illegal and void. The character of the Judge, however upright and pure, does not vary the case."

By Lord St. Leonards (p. 240):

"And your Lordships have shown by your decision in a case that was decided lately by this House, *that a Judge with the smallest interest was incapable of trying a cause*, not because anybody supposed that he would be influenced (nobody supposed so), but because the principle is, *that a man*

shall not have an interest in a matter in which he is to decide. You must take the general principle. But it is said by the learned Judges, 'Yes, that is a principle of law.' No doubt it is, but upon what was that principle founded? Does any man doubt that it was founded upon public policy?"

By Lord Truro (p. 203):

"My Lords, my opinion has been founded upon what I firmly believe is the just result of my experience of the present state of the political community which must be subjected to the operation of the proviso in question, and I cannot, when performing the solemn duty of a judge, deny or reject that experience in order to adopt a *sentimental theory of purity*, which in truth, *is not applicable to the present, and as to which I doubt whether it was applicable to any former, or will be applicable to any future period of the history of this country.*"

By Lord St. Leonards (pp. 235-6):

"I cannot help thinking that there is a great deal in the argument which was addressed to us from the bar, as to the embarrassment which such a provision as this would create in the Crown. Constitutionally speaking, I will not on this occasion separate the Crown from its ministers, but I will consider the Crown acting in the usual way, by responsible ministers. Then observe what it is that is desired. A particular dignity is pointed out, and particular limitations of that dignity are chalked out, and there is this *pressure at least put upon the Crown*, that a case of compassion is raised. Suppose Lord Alford was an infant when the testator made his will and provided for his infancy. Suppose, for example, the estate to have come to the infant Lord Alford, and suppose Lord Brownlow to have died, and the Earldom of Brownlow to have

descended to Lord Alford, whilst he was an infant, then comes the clause that if, within five years he did not obtain the dignity, his estate should go over to others—an estate worth two millions of money. *Now, conceive the pressure that is put upon the Crown*, the case of compassion which is made out. Will the Crown refuse the dignity to this family? Will it refuse one step more in the peerage, knowing that the consequence of the refusal will be that this vast estate will go from the person for whom it was provided in the first instance, and thus the object of the testator's bounty be frustrated? *I say, my Lords, that it is an indignity, an insult offered to the Crown.* * * *

Suppose I were to imagine that two sovereigns had been compelled, in consequence of this very provision, to refuse a step in the peerage to give effect to this instrument, it would be no great stretch of the imagination; and yet what can be more painful when you look at the great pressure upon the party? It is a dangerous power to be placed in the hands of any man, with such a temptation to use it—a temptation almost irresistible. God forbid that I should say there are not men who could resist it; but the temptation is more than you are justified in laying before a man—more than you are justified in exposing him to. You are not justified in raising so fearful an issue. * * * Then what would have been the position of the Crown? Here is a young nobleman—an Earl—to whom this property has been left, as a child, wholly guiltless of any neglect whatever, belonging to an ancient stock and a noble family, and the Crown has the means, by giving him only one more step in the peerage, to secure to him an estate of 70,000*l.* a year. *My Lords, it is a position in which no subject has a right to place the Crown.* * * * *Dignities ought to come from merit, and from merit alone."*

By Lord St. Leonards (at p. 234):

“A more unblushing and audacious disposition of property never was made by man; and that the parties entitled under it should dare to go into a Court of Equity and ask for the execution of that trust, does show a state of things sufficient to alarm us.” * *

This decision of the case of *Egerton v. Earl Brownlow* was cited and fully and clearly stated in the brief; and the passages of the decision quoted above, and others to the same effect, were quoted in the brief.

The decision in *Egerton vs. Earl Brownlow*, 4 H. L. C. 235, just stated, although made by an English court, is, as every American lawyer knows, an authority upon the law of California. And this was expressly decided and declared in 1886 in a great case by the Supreme Court of California.*

The decision in *Egerton vs. Earl Brownlow* was then, as all the Justices of the Supreme Court of California well knew, properly cited in the brief. We may, therefore, properly compare the case, as it stood when the brief was filed, with that case and the decision there made.

1. The Similarity in the Decisions Sought to be Influenced.

In the case of *Egerton vs. Earl Brownlow*, the possible decision which the maker of the will had in mind was a decision of the question which might at some time arise whether a dukedom or marquissate should be created and conferred upon Lord Alford.

In the case here, the possible decision which the persons concerned in the transfer to the Newmans had

**Lux vs. Haggin*, 69 Cal. 379.

in mind, was a decision of the question which might at some time arise, whether that transfer should be upheld so as to give the deceased partner's interest in the firm to the two Newmans.

In each case, the possible decision contemplated was that of a public official.

In each case, the possible decision was one involving the exercise of judgment.

In both cases, the character of the possible decision planned for was the same. And in deciding the case of *Egerton vs. Earl Brownlow*, the Judges treated the possible decision which the corrupt scheme was contrived to influence, as being of the same nature as the decision of a lawsuit. They said, for instance, "Any contract or engagement having a tendency, however slight, to affect the administration of justice, is illegal and void." And they used many other similar expressions.

In this particular, then, the case here is substantially the same as that of *Egerton vs. Earl Brownlow*.

2. In the Case Here, the Probability that the Decision Would Be Called for was the Greater.

In the case of *Egerton vs. Earl Brownlow*, when the will was made Lord Alford was but a child. He might die or might (as turned out to be the case) never ask for a dukedom or marquisate, and so the question might never arise and the decision might never be made or called for. And it turned out that the question never did arise, and the decision never was made or called for.

In the case here, as all the persons concerned in the

transfer to the two Newmans well knew, the question was sure to arise. The only persons having any interest to oppose the transfer were the three women, the deceased partner's family. They had announced their extreme opposition to any such transfer, and solely for that reason had employed an attorney, and were undergoing deprivation of their means of daily sustenance.

In this particular, then, the case here is far clearer and stronger than was that of *Egerton vs. Earl Brownlow*.

3. In the Case Here, the Corrupting Influence Was the Same in Kind and Far Greater in Degree.

In the case of *Egerton vs. Earl Brownlow*, the corrupting influence contrived by the maker of the will would consist only of the fact that the Crown, if asked to create the dukedom or marquisate and to confer it upon Lord Alford, would see that a refusal, while it would not enrich the Crown, would subject Lord Alford to a danger of great pecuniary loss, or would, at least, subject his heir to a danger of not inheriting the estate. In deciding the case, the Judges, speaking of this, said :

* * "there is this pressure at least put upon the Crown, that a case of compassion is raised.
 * * Now, conceive the pressure that is put upon the Crown, the case of compassion which is made out. * * I say, my Lords, that it is an indignity, an insult offered to the Crown."

In the case here, the corrupting influence contrived by those concerned in the secret transfer to the Newmans would consist in the fact that the Judges, if asked to sustain the transaction, would see that a refusal

would subject Ralph C. Harrison, one of the Justices of the Supreme Court of California, to such certain loss and injury as results from being by the judgment of a Court, shown to be an exceedingly base, vile, treacherous, depraved, lying scoundrel.

It is of course manifest at a glance that such a result would be to subject Mr. Harrison to great loss and injury. And this has been expressly confessed by the Justices themselves, his associates, in the judgment of disbarment. Take, for example, the following expressions:

* * "An attempt to influence a Judge through fear of physical injury is no graver offense than such an attempt against his reputation. A high-spirited man might have perfect physical courage and yet might possibly, despite all his efforts against it, be to some extent insensibly affected by dread of the loss of his reputation and good name."*

And such loss and injury would necessarily be of a character most repugnant to the Justices, Mr. Harrison's associates, to inflict. Such a judgment would necessarily implicate and point at him as an exceedingly dishonest and treacherous and corrupt person. It would necessarily wound deeply their friendly feelings for him into which he would have had so great opportunity to ingratiate himself. It would deeply wound their passions for the privileges of their corps. It would be opposed by their sense of the loss of confidence in and respect for the Court if he should continue to be a member of it, and by their sense of the loss of respect for themselves that would ensue if they should continue to be members of the Court along with him, and, most of all, by the enormous corrupting

* See the Appendix, p. 27.

influence of the great organization of corporations, The Southern Pacific Company and that of their allies.

Thomas Jefferson, in his *Autobiography*, says of the judiciary:

“ I deem it indispensable to the continuance of this government, that they should be submitted to some practical and impartial control. * * It is not enough that honest men are appointed judges. All know the influence of interest on the mind of man, and how unconsciously his judgment is warped by that influence. To this bias add that of the *esprit de corps*, * * and how can we expect impartial decisions ?”

And it is proper to bear in mind that in the case here the overwhelming strength of the corrupting influence has been proved by the result.

In this particular, then, the case here is far stronger than was that of *Egerton vs. Earl Brownlow*.

4. The Channel For the Corrupt Influence Was More Sure to Exist in the Case Here.

In the case of *Egerton vs. Earl Brownlow*, the connection through which, if at all, the corrupting influence was to be exerted, was only a connection that might possibly exist, namely, that the person of the Crown might know Lord Alford (or his heir, as the case might be) and feel friendly toward him (or, at least, feel friendly toward his heir).

In the case here, the Judges to decide the case would be sure to know Ralph C. Harrison, and, before the case could reach them, he would have every opportunity, from being in their company and in the most

intimate relations with them for years and almost every day in the year, to secure their firmest and warmest friendship.

In this particular, then, the case here is enormously clearer and stronger than was that of *Egerton vs. Earl Brownlow*.

5. The Moral Depravity Was Beyond All Comparison Greater in the Case Here.

In the case of *Egerton vs. Earl Brownlow*, the maker of the will held no relation of trust or confidence toward any person to be benefited or injured by the possible decision for which the corrupting influence was prepared; and no injury was to result to any one.

In the case here, all the persons concerned in the secret transfer of the deceased partner's interest to the two Newmans held relations of trust and confidence toward the deceased partner's family. The executor was trustee for them, and Ralph C. Harrison "stood in the same confidential relation." (See Vol. 99, Cal. Reports, p. 56). The two Newmans were trustees of the deceased copartner's interest in the firm, and M. S. Eisner was attorney for them in that capacity. They were all engaged in breach of trust.

Besides, the persons toward whom they held those confidential relations were women, an aged widow and her daughters, the family of the deceased copartner of the two Newmans. The dying partner had in his will specially appointed Benjamin Newman a trustee to protect his "beloved mother." They were engaged secretly, as was becoming in so vile a crime, in defrauding and robbing the helpless family of a dead friend

and in a plot to corrupt against them the courts of justice. Could there be imagined any deeper or meaner or viler or baser depth of human depravity?

In this particular, then, the case here is beyond all comparison stronger than was that of *Egerton vs. Earl Brownlow*.

(6) The Proof of the Corrupt Intention is Beyond all Comparison Greater in the Case Here.

In the case of *Egerton vs. Earl Brownlow*, the evidence of the intention of the maker of the will consisted of the bare fact of the two provisions in the will (stated on pp. 81-2 above) and their natural tendency so far as to be seen only by the light of reason.

In the case here, the natural tendency of the transaction was the same in kind as was the case there, and, as has been shown, was far more manifest and was enormously stronger in degree. Indeed, it was so manifest that those concerned in the secret transfer to the two Newmans must needs have been inconceivably simple not to have seen the inevitable effect of what they were about. But there is the strongest additional evidence—evidence of which the case of *Egerton vs. Earl Brownlow* had no counterpart—that in the secret transfer of the deceased partner's interest in the firm to the two Newmans on September 6, 1890, Ralph C. Harrison, M. S. Eisner, the executor and the two Newmans knowingly and intentionally contrived a scheme to corrupt the administration of justice.

Typewriting machines were at the time in general use and typewriters generally employed. Why, then, were the papers of transfer put in the handwriting of

Ralph C. Harrison? Why, to show and emphasize the fact that it was Ralph C. Harrison's transaction.

M. S. Eisner was present. Why were not the papers subscribed by M. S. Eisner as the witness? Why by Ralph C. Harrison instead? There is the same answer. Mr. Eisner was not candidate for Justice of the Supreme Court. Mr. Eisner was not to occupy the influential office of Justice of the Supreme Court.

Again, how did it happen that the sum for which the transfer was made was less by \$593.18 than the "balance sheet" of the Newmans showed?

Why was not a word dropped about so important a transaction? Why were not the deceased partner's family, the only persons interested to oppose the transfer—why were they not told about it? Why was not their especially employed attorney informed? Why did "Mr. Justice Harrison" use his promise to that attorney only as an additional cloak to the secrecy? Is not all that secrecy, in such a case, proof of corrupt and guilty intention?

Then, too, there stands the fact that, only a little before, in July, 1890, Ralph C. Harrison was in the Probate Court collusively assisting the two Newmans in an effort to obtain from the Court, by deception, an order directing the executor to transfer the deceased partner's interest in the firm to them on the very same terms as those of the secret transfer made on September 6th.

And there is the effort of "Mr. Justice Harrison" in December, 1890, to induce the Probate Court to rule against the deceased partner's estate on the question of the good will of the firm's business.

There, too, is the proof that from early in July, 1890, the Newmans, on the wicked advice of Ralph C. Harrison, relentlessly pursued toward their deceased partner's family the plan of withholding their means of subsistence so as to drive them to need and hold them in need until the siege should compel them to consent to such a transfer. There is the proof that the executor assisted in that siege of penury upon the deceased partner's family for more than fourteen months and until the Probate Court ordered the partial distribution.

There, too, is the proof that on March 5, 1890, the Newmans, on Ralph C. Harrison's advice, trapped the deceased partner's family into signing the paper waiving the presence of a representative while the Newmans made their inventory and appraisement.

There, also, is the proof of the continual deceit practiced by Ralph C. Harrison for the benefit of the two Newmans. There is the refusal of the executor in November, 1891, to tell what had been done. There is the fact that the Newmans procured for the executor a bond when his removal was demanded. And there is his prompt offer to resign and his actual resignation under charges of being the fraudulent confederate of the two Newmans.

And there is the cry raised by E. R. Taylor, "It is in Judge Harrison's handwriting."

But if any one question whether Ralph C. Harrison was capable of the most base and corrupt intention, let the bare fact of the secret transfer of the deceased partner's interest to the two Newmans on September

6, 1890, be considered. It was the transfer of the whole property and estate of the dead partner's family, Ralph C. Harrison's clients. To defend it, they had employed an attorney to act with Mr. Harrison. Mr. Harrison had given his express promise to have no step taken without notice. Under such circumstances, if Ralph C. Harrison had been an honest man, if he had not been capable of the utmost and deepest perfidy and baseness, it would have been utterly impossible for him to advise and take part in such an act.

Cicero, in the oration against Verres, says that the Roman senate "thought it a robbery, not a purchase, when the seller was not allowed to sell on his own terms." Is it not far more criminal, adding the viler element of theft, of stealing, to go still further and not to allow the seller even to know that his property is being transferred away and given over to another? And when all this is done under a promise to allow no step to be taken without notice, there is added the element of lying. And when it is one's own clients whose property is being so transferred away, there is added the further element of treachery. And when those clients are women, the bereaved and unprotected family of a dead man, there is the quality of the unspeakably vile dastard. And when it is all done under the cloak of candidate for the office of Justice of the Supreme Court of the State, what depth of crime and villainy and baseness is not reached? And that was Ralph C. Harrison.

A comparison of this case with that of *Egerton vs. Earl Brownlow* shows that the two cases are identical in principle; but that the case here is out of all comparison clearer and stronger than that case; that the

case here is established by proof which is, beyond all comparison, the greater—indeed, by proof amounting to demonstration—and that the case here is of a depravity, a baseness, a treachery and an unscrupulous villainy out of all comparison with anything that appeared in *Egerton vs. Earl Brownlow*.

The contrivance held illegal in the case of *Egerton vs. Earl Brownlow*, and the plot of Justice Harrison and the two Newmans and their confederates, were each plainly the same in principle as a bribe—in each the contrivance was essentially bribery couched in a most effective form.

In 1896 The Southern Pacific Company were suing the Board of Railroad Commissioners of California in the United States Circuit Court at San Francisco for an injunction against the reduction of freight charges upon their railroads. One ground of the suit was that two of the Commissioners had been elected upon a party platform pledging them to make some such reduction. The contention of The Southern Pacific Company was that that pledge was essentially a bribe. On May 19, 1896, John Garber, one of the counsel of The Southern Pacific Company, in support of that contention, said to the United States Circuit Court:

“What is a bribe? I speak not now of a bribe in the grosser sense of the reception of a money consideration concerning the performance of judicial duty. * * I speak of what is a bribe in its essence, in its quality, as applied to matters of this kind. Merely and simply this: That kind of favor, that kind of affection, that kind of influence, that kind of obligation, which tends necessarily to turn the official away from the judicial, impartial and proper performance of his duty.”

The Judges who decided the case of *Egerton vs. Earl Brownlow* had no difficulty in perceiving the character of the transaction there in question. They denounced it as an "indignity, an insult." They condemned it and destroyed it by their judgment. They were outspoken and emphatic that "any contract or engagement having a tendency, however slight, to affect the administration of justice is illegal and void." They were amazed at the temerity that had dared to ask for any other result. They saw in that temerity the indication of an alarming state of things. See their language quoted above. In that decision there is displayed the spirit of honest men of uncorrupted judgments.

The Robbery of the Three Defenseless Women of Their Inheritance.

Ralph C. Harrison had joined the two Newmans as their most foul and vile fellow conspirator. And the law (and reason also) concerning fellow conspirators is as follows:

"Every person entering into a conspiracy or common design already formed is deemed in law a party to all acts done by any of the other parties, before or afterwards, in furtherance of the common design."*

"Every act and declaration of each member of the confederacy, in pursuance of the original concerted plan, and with reference to the common subject, is, in contemplation of law, the act and declaration of them all. It makes no difference at what time any one entered into the conspiracy.

*Greenl. Ev. Vol. 3, Sec. 93.

Every one who does enter into a common purpose or design is generally deemed, in law, a party to every act which had before been done by the others, and a party to every act which may afterwards be done by any of the others in furtherance of such common design.”*

The rule of law as thus stated was, for the benefit of The Southern Pacific Company, rigorously enforced in 1895 by the United States District Court at San Francisco in the criminal prosecution of participants in the great railway strike of 1894.†

It was also rigorously enforced in December, 1894, by the United States Circuit Court for the Northern District of Illinois, in the prosecution and conviction and punishment of Debs for his leadership in the same strike.‡

Ralph C. Harrison was, therefore, legally as well as morally responsible for the entire conspiracy of the two Newmans, and the case against them was a plain and simple case.

Consider the condition of their sick partner, John Levinson, as shown in the proof set out on pp. 9-10 above: “away from his family”; “at the Lick House”; “confined to his room there”; “afflicted with * * * hypochondria, * * * a disease of the nervous system and of the brain more particularly”; “his condition bordered very closely on melancholia”; “and melancholia is insanity”; not “possible for him to investigate anything at that time”; “practically destitute of will power”; “condition of his mind very bad”; “without power of application”; “could be easily led to do any-

* Id. Vol. 1, Sec. 111.

† See *United States vs. Cassidy and Mayne*, 67 Fed. Rep. 698.

‡ See *United States vs. Debs*, 64 Fed. Rep. 764.

thing"; "afflicted with great despondency and a tendency to suicide"; "unable to walk without support"; "always threatening suicide because he supposed he was losing his mind"; "watched that he might not commit suicide"; "fully convinced that he was about to lose his mind"; "his great fear was that he would become insane" would not "have given attention to a single page of anything or * * read through a page of anything."

It was while Mr. Levinson was in the helpless condition shown in the proof just quoted, "away from his family," and shut up in a room in a hotel, that the two Newmans, his copartners, secretly got a lawyer to draw up for them the articles of partnership, to which they then secretly got their sick and helpless partner's signature, and which upon his death they claimed to give them the right to take his entire estate at a valuation to be fixed by themselves alone.

Such are the specimens of low cunning and degraded baseness, William J. Newman and Benjamin Newman. They are brothers; they are of one and the same identical breed. But it happened most remarkably, as if from the interposition of Providence, that the articles of partnership so contrived by the two Newmans failed to state *a price or any means of arriving at a price* for which they might take their sick partner's interest as soon as he should die, and for this reason even the language of the articles failed to give them any such right.

At the very next stock-taking, after the two Newmans thus secretly got their sick and helpless partner's signatures to their articles--the stock-taking made by the Newmans while Mr. Levinson, sick and helpless,

was in Europe—the two Newmans, by means of those articles of partnership, and by the trick of reserving part of the profits as interest on capital, put into their own pockets the sum of \$206.53 out of Mr. Levinson's share, and, as they themselves avow, still another sum of \$231.25 at his death. And while Mr. Levinson was so away in Europe, sick and helpless, the two Newmans also used his capital and share to purchase an interest of Buyer & Reich in the business, and by that means took \$11,548.76 from him.

Like buzzards, the Newmans began upon their sick prey as soon as he had become helpless; they could not wait for life to become extinct.

It was only a few days after they had so got those articles of partnership that Benjamin Newman conducted to the room in the Lick House, where Mr. Levinson was confined, the lawyer to draw up his will. Can it be fairly doubted that the sick partner, who was "away from his family" and "could be easily led to do anything," in accepting as his executor one who turned out to be the tool of the two Newmans, did so by the procurement of the Newmans themselves?

Cicero says that the Roman senate would not allow the proconsuls to purchase goods in the provinces "because they thought it a robbery, not a purchase, when the seller was not allowed to sell on his own terms." Now, consider the bare fact of the means by which the two Newmans have, after their co-partner's death, seized upon and forcibly withheld and taken as their own, his interest in the firm. They have done it privately, without authority from any Court or Judge. They have taken it for a sum determined on and fixed by themselves alone without any supervision whatever.

They have done it against the known and strenuously expressed wishes of the three defenseless women to whom the property belongs. They have done it with the craftiest and most studious secrecy. They did not show or offer to show a book or an item or a paper to those whose property they were taking. They have taken it by force and craft, deliberately and relentlessly taking the basest advantage of the necessities and distress of those whose property they were taking.

Was it not, then, a robbery?

Again, consider the trifling sum allowed, only \$20,790.88 (and even that paid only by installments running through a year) for a property earning more than twelve thousand dollars per year and continually growing and increasing in earning capacity. Even before the secret and "unauthorized and void" transfer of Mr. Levinson's interest in the firm to the Newmans was discovered, the very net income of his interest taken in and pocketed by the Newmans had amounted to more than all they had allowed as the price of the property itself?

Was it not, then, a great robbery?

The testimony of William J. Newman and that of his chief bookkeeper are in the record of the case in the Supreme Court, and are discussed in the plaintiff's brief; and each of them is there shown and demonstrated to be a crafty but rather dull-witted perjurer.

Consider the making of the inventory and appraisal of the assets of the firm by the Newmans after Mr. Levinson's death. It was made by the Newmans alone, without any supervision whatever. Within a few days after it was done it became impossible to know whether or not they valued all the goods or what

values they set down; nor has a particle of evidence about it been produced. What reasonable man can believe that that inventory and appraisement was fair? What man would be willing to have his own property taken from him against his will and without so much as a shadow of right by so base and unscrupulous wretches as these Newmans are proved to be, and upon their own inventorying and appraising made by them with the knowledge that they were not being watched, that their intention to take the property was not known and that within a few days it would be impossible to find out what they had in fact done?

While the Newmans were making their inventory and appraisement, it occurred to them, after advising with their confederate Ralph C. Harrison, to secure from their deceased partner's family a writing which the Newmans could show as proof that those whom they were despoiling had consented that they might inventory and appraise the assets without supervision. They, therefore, prepared the writing, the language of which is quoted on p. 23 above, and trapped their victims into signing it. And is it not another event most remarkable, as if from another interposition of Providence, that the language of that writing both failed to state any such consent (for it only said that the signers did not desire to employ any third person to assist, but did not authorize the Newmans to do anything or agree to be bound in anyway by what the Newmans were doing) and showed also that the Newmans' inventory and appraisement had been begun previously and was then "in progress"?

To illustrate the character of that inventory and appraisement of the Newmans, it will be enough to

mention the item set down by them as profits earned between June, 1889, and February, 1890, the time of Mr. Levinson's death. That item is only \$5,927.29 for profits earned in the part of the year covering the Christmas season, the best part of the year for sales—an item of much less than 2 per cent of the sales. This was at the rate of only \$8,890.00 for profits in the entire year. But prior to that time the profits of the firm had been such sums per year as \$32,401.25 or 8 per cent. of the sales; and \$39,580.51 or 10 per cent. of the sales. And in the year next after their partner's death the Newmans themselves divided up and pocketed as their own the sum of \$44,252.45, as profits, being more than 8 per cent. of the sales, and in the next fifteen months the sum of \$61,288.11, also more than 8 per cent. of the sales

Again, consider the seizure by the Newmans of the entire asset of the good will of the business, an asset of enormous value, without allowing so much as a cent for it. All that enormous asset, described by Dr. Johnson as "the potentiality of growing rich beyond the dreams of avarice," they have taken as an out and out robbery.

The Civil Code of California states (Sec. 993):

"The good will of a business is property, transferable like any other."

In *Binninger vs. Clark*, 10 Abb. Pr. N. S., 269, the Court said:

"The good will of a business firm is an important part of its property, and will be protected by a Court of Equity, whenever a proper case arises."

In *William vs. Wilson*, 4 Sandf. Ch., 380, the Court said:

"It is useless to trace the origin and growth of this good will. All the partners contributed to it, and whether in equal or very unequal proportions, is quite immaterial. It belongs equally to them all, and is an important and valuable interest which the law recognizes and will protect."

In *The G. & H. Manuf. Co. vs. Hall*, 69 N. Y., 230, the Court said of the good will of a business:

"It does not mean simply the advantage of occupying particular premises which have been occupied by a manufacturer, etc. It means every advantage, every positive advantage, that has been acquired by a proprietor in carrying on his business, whether connected, with the premises in which the business is conducted or with the name under which it is managed, or with any other matter carrying with it the benefit of the business."

In *Churton vs Douglas*, Johns. Ch., 188, the Court said:

"The name of a firm is a very important part of the good will of the business carried on by that firm. A person says, 'I have always bought good articles at such a house of business; I know it by that name, and I send to the house of business identified by that name, for that purpose.'"

In *Levy vs. Walker*, L. R. 10, Ch. Div. 448, the Court said, by Lord Justice James:

"But there is another point upon which I myself cannot entertain any doubt, which is this, that the assignment of the good will and business of *Charbonnel & Walker* did convey the right to use the name of *Charbonnel & Walker*, and the

exclusive right to use that name as between the vendor and the purchaser of that business. Whether it would prevent another person from afterwards using the name of *Charbonnel*, I do not say; but the trade name, made up of parts of two real names, as the Master of the Rolls says—the trade name of *Charbonnel & Walker* (whether it was entirely a fictitious name can make no difference)—was the name of the business and that business was sold. That was a name with which every article sold might have been impressed, just as in the case of *Millington vs. Fox* (3 My. & Cr.), where the name was continued as part of the designation of the article sold. I think it right to say that the sale of the good will and business conveyed the right to the use of the partnership name as a description of the articles sold in that trade, and that that right is an exclusive right as against the person who sold it, and an exclusive right as against all the world, so that no other person could represent himself as carrying on the same business.”

Other items, other proofs of the enormity of the robbery, have been mentioned in preceding pages. It is there shown that, even after themselves inventorying and appraising the assets, the Newmans could not refrain from stealing another sum of \$593.18, shown by their own “balance sheet.” They are like the cavern in the fable, which was known to contain the lair of a ravenous beast from the fact that, while the footprints showed that many innocent creatures had gone into it, there was no indication that any had ever come out.

The amount of the robbery can not be fully known without an accounting and a winding up of the firm; but at a low estimate the property of the despoiled

family now in the hands of the two Newmans amounts to upwards of \$200,000.00. And, as has been shown above, Ralph C. Harrison, Associate Justice of the Supreme Court of California, is a party to that entire robbery.

The Announcement of the Brief in the Newspapers.

The brief was filed on November 30, 1894. Within two or three days afterward, various daily newspapers of San Francisco published newsarticles about it. One such news article was published in *The Daily Report* and another in *The Evening Post*, both on December 1, 1894. Another was published in *The Examiner*, another in *The Chronicle*, and another in *The Morning Call*, the last three all on December 2, 1894. All these news articles announced that the brief charged and showed a case of outrageous fraud and corrupt practice, in which Ralph C. Harrison, who subsequently to its commission had become one of the Justices of the Supreme Court, was exhibited as a participant and *particeps criminis*. Until the disbarment proceeding was actually begun, no newspaper even so much as suggested that the brief contained any "menace" or "threat" or "assault." And even after the disbarment proceeding had been begun, no newspaper except those of The Southern Pacific Company (presently to be mentioned) even so much as suggested that the brief contained any "menace" or "threat" or "assault."

II.

THE DISBARMENT OF THE ATTORNEY.

1. The Citation.

On December 7, 1894, just one week after the brief was filed, all the Justices except Harrison signed an order of citation requiring me to appear and show cause why I should not be disbarred, and for no other ground than preparing and filing that brief. This was of course long before the case in which the brief was filed had been heard or even set for hearing, and at a time when the brief had not been submitted to the Court or any Justice for any action whatever.

Let it be borne in mind that, up to this time, the only way in which the brief could have been openly brought to the attention of the Justices was by the articles in the newspapers just mentioned, and that *none of those articles mentioned the brief as doing more than to show an outrageous piece of fraud and villainy in which Justice Ralph C. Harrison had been a party.*

That citation contains all the accusations that were made against me, except those (presently to be mentioned) set out as new accusations in the judgment of disbarment. A copy of the citation is in the Appendix (pp. 4-6.)

I ask the reader to examine the citation by itself. The part of the brief referred to in it was the exposition of the secret transfer by the executor to the two Newmans, and the putting the papers of transfer in the handwriting of a man who was about to be a Justice of the Supreme Court of the State—a secret transfer in

which the man who was about to become such Justice was one of the contrivers—the exposition of it as a scheme and plot to tempt the Justices of the Supreme Court when they should be called upon to decide the case, to deny the fraud, and uphold the transaction so as to shield their associates and intimates. It was the part of the brief described on pp. 75 and 79-81 above.

I ask the reader to examine the citation by itself, and to examine the extract of the brief there quoted. Is it anything less than outrage to pretend that what is there shown was any ground for disbarring the author of the brief?*

I ask the reader to notice also that the citation did not charge that the brief contained any “menace” or “threat” or “assault.”

2. The Evening Post and the Record-Union.—The Hand of The Southern Pacific Company.

But as soon as the citation was made, on the very day on which it was made, *The Evening Post*, published in San Francisco, a newspaper of The Southern Pacific Company, was in the secret that the disbarment was to be made upon the trumped up ground that the brief was an “attack upon the Supreme Court in general and Justice Harrison in particular.”† Pray observe that this was upon the very day upon which the citation was made. And thereupon *The Evening Post*, published in San Francisco, and *The Record-Union*, published in Sacramento, raised and kept up the outcry that the brief outrageously *threatened* and *menaced* and *assaulted* the

*See the Appendix, p. 5.

†See the Appendix, p. 6.

Supreme Court itself and all the Justices—the identical false and trumped up grounds and trickeries afterward put into the disbarment judgment. All the language of the judgment of disbarment declaring that such was the character of the brief was taken from those newspaper articles of The Southern Pacific Company.

And it was in those articles in *The Record-Union* that it was laboriously and dishonestly urged that the charges of fraud contained in the brief were groundless—another ground of the disbarment judgment. All the language of the disbarment judgment setting forth that ground of the disbarment was taken from those articles in *The Record-Union*.

The Record-Union was then, as it still is, published under the immediate supervision of Wm. H. Mills, one of the chief officers and agents of The Southern Pacific Company. Wm. H. Mills was then, as he ever since has been, a resident of San Francisco, and he was then, as he still is, the head and manager of the newspaper bureau of The Southern Pacific Company and their censor of the newspapers of the State.

The articles here referred to were published as follows: A news article in *The Evening Post* on December 7, 1894; an editorial in the same paper on December 12, 1894; an editorial in *The Record-Union* on December 13, 1894; an editorial in *The Record-Union* on December 20, 1894; and an editorial in *The Evening Post* on December 20, 1894. A copy of each article is shown in the Appendix (pp. 6-21).

These articles may be seen in the files of the newspapers above named. The files may be seen in the Mechanics' Institute Library in San Francisco.

I ask the reader to compare the articles so published in *The Evening Post* and *The Record-Union*, respectively, with the judgment of disbarment (shown on pp. 22-33 of the Appendix). Those of December the 7th, December the 12th, and December the 13th were published even before there was the pretense of a hearing of the charges made in the citation. Now, take for example the long editorial in *The Record-Union* on December the 13th, which occupied almost the entire editorial side of the paper. There (with the exception of six new accusations presently to be mentioned) you will see all the falsehoods of the judgment of disbarment—falsehoods of fact and falsehoods of law—all the false and trumped up grounds, all the malice, all the trickeries, all the peculiarly false terms and phrases, even the tricks of expression, and also the identical *motive*, of the judgment of disbarment. And there they are repeated in the articles published on December the 20th in both newspapers, almost three weeks before the disbarment judgment was made—that in *The Record-Union* occupying the entire editorial side of the paper.

The purpose of those articles in *The Evening Post* and *The Record-Union* was to deceive and mislead the people, to induce the people to suppose that the disbarment which had already been determined upon and was about to be inflicted, would be a proper act—to work up and prepare a false public opinion to bolster the outrages which had been determined upon and were about to be committed—and also to divert attention from the fraud and treachery and wicked use of his office as Associate Justice of the Supreme Court which was being practiced by Ralph C. Harrison upon Mrs. Fanny Levinson and her daughters. See, for instance,

such expressions as "the time has come when law-abiding citizens must rally," etc. (Appendix p. 9). For the same purpose there was placed in the news article published in *The Evening Post* on December 7, 1894, the lying statement of "the general belief among attorneys" (See the Appendix p. 8). That statement was a pure lie, for it was not until that day that the proceeding was begun, and no such proceeding had been previously suggested, and that very article was the first announcement to the public that the proceeding had been begun, so that before writing the article it was utterly impossible to have ascertained "the general belief among attorneys." The evident purpose of the lie was to work up a false public opinion. It was the same purpose as that for which "a committee from the Bar Association of San Francisco" was obtained, as will presently be shown.

I ask the reader to bear in mind that, with the sole exception of those two newspapers of The Southern Pacific Company, no newspaper indicated in advance that it was to be pretended that the brief contained a "threat," a "menace" or an "assault" or any of the grounds, all of them false and feigned, upon which the disbarment was to be made. And let it be borne in mind that *The Evening Post* was in the secret on December the 7th, 1894, on the very day when the disbarment proceeding was begun. The key-note was there struck in the words, "Attorney Horace W. Philbrook's attack upon the Supreme Court in general and Justice Harrison in particular has landed him in a peck of trouble." (See the Appendix, p. 6.)

Is it not plain that those articles in the newspapers of The Southern Pacific Company and the disbarment

judgment which was made shortly afterward (January 5, 1895), are the work of one and the same mind? Otherwise would it not have been manifestly impossible to print such articles in advance?

So important is this feature of the case that I shall point to it again in connection with a particular review of the judgment of disbarment.

There was the source of the judgment of disbarment and of the disbarment case—in the private offices, in the secret councils of The Southern Pacific Company. Though I did not then know it, it was the fact that my brief, in striking Ralph C. Harrison, Associate Justice of the Supreme Court of California, struck the foul and wicked nest of The Southern Pacific Company, and forthwith the whole terrible organization was awake, and—like a nest of venomous snakes—maliciously bent upon the destruction of my family and myself.

The anarchist riots and murders at the Haymarket in Chicago occurred in May, 1886. For those crimes seven of the anarchists were speedily tried and condemned to death, and four of them executed. In the trial much of the evidence against the persons thus condemned and executed consisted of newspaper articles published in the *Alarm* and the *Arbeiter Zeitung*, newspapers of the society of anarchists, the articles so given in evidence beginning as far back as March, 1885. But all those articles combined were of a character which furnished against the anarchists who, upon such evidence were condemned and executed, very far less proof than, in the case here, these articles in *The Evening Post* and *The Record-Union* furnish of the authorship of The Southern Pacific Company in the

disbarment judgment and the whole disbarment proceeding.*

And here may be seen the wisdom, if the case was to be carried on at all, of writing the brief in the very manner in which it was written. If the brief had not laid the sin home to the sinner as it did, justice would have been simply denied without furnishing the proof that is here exhibited of the extreme corruption and wickedness of the Judges and of their being the corrupt tools of The Southern Pacific Company.

Wendell Phillips, in referring to the speech for which Charles Sumner was struck down in the United States Senate, once said:

"Nobody needs now to read this speech of Charles Sumner to know whether it is good. We measure the amount of the charge by the rebound. When the spear, driven to the quick, makes the Devil start up in his own likeness, we may be sure that it is the spear of Ithuriel."

3. **"A Committee From the Bar Association of San Francisco."† The Hand of The Southern Pacific Company.**

In 1894, when the brief was filed, one Robert Y. Hayne and E. S. Pillsbury, the agent of The Southern Pacific Company who in 1890 managed in the convention the nomination of Ralph C. Harrison as Justice of the Supreme Court, were law partners in San Francisco. At the same time the son of Justice Ralph C. Harrison was an occupant of their law offices and associated with them in the practice of the law. There had

*See the *Anarchists' Case* (*Spiess vs. The People*, 122 Ill. 1.)

†See the Appendix pp. 22, 32; also pp. 9, 20, 36.

already been for many years in San Francisco a private club of lawyers called the Bar Association of San Francisco, and all the Justices of the Supreme Court and the principal attorneys of The Southern Pacific Company were then, as they still are, members of it.

At the time the brief was filed and when the disbarment was inflicted, E. R. Taylor, a crony of Justice Ralph C. Harrison and one of the attorneys for the two Newmans, was the president of this club.

To return to the articles in the newspapers of The Southern Pacific Company. As already stated, an editorial was published on the evening of December 12, 1894, in *The Evening Post*, and on the morning of December 13, 1894, a long editorial, which was substantially the judgment of disbarment, was published in *The Record-Union*.*

Now, on December 14, 1894, the next day after the editorial last mentioned appeared, this Robert Y. Hayne got together a meeting of some of the members of the Bar Association of San Francisco and induced them to appoint a committee and to make him the chairman of it, with instruction to attend at the hearing of the citation, "for the purpose of seeing that said matter is properly presented."† The committee attended accordingly, and this Robert Y. Hayne, appearing as the chairman of the committee, addressed the Court, and, after declaring that the committee, after examining the case, were of the opinion that the proper presentation of it required them to urge that the disbarment be inflicted, followed with an address in which—while hypocritically asking the Court to allow me all the

* See the Appendix pp. 8-15.

† See the Appendix p. 16.

time I might ask for presenting my defense, and covering me with fulsome flattery of my ability, as a snake covers with slime the victim he wishes to devour—he, with his characteristic dishonesty and trickery, repeated to the Court what I subsequently discovered to be the very identical argument of falsehood and trickery which had been published in *The Record-Union* on December the 13th, as above stated. That such was his argument is shown in the editorial published in *The Record-Union* on December the 20th* and is also confessed by Wm. H. Beatty, the Chief Justice in his concurrence in the disbarment filed on January the 10th.†

There was Robert Y. Hayne, partner of E. S. Pillsbury, the agent of The Southern Pacific Company, delivering in San Francisco on December the 17th and the 18th, as chairman of a committee of the Bar Association of San Francisco, an argument which was all invention and falsehood and trickery, and that same identical argument with all its peculiar invention and falsehood and trickery had been published just four days previously by The Southern Pacific Company in Sacramento as an editorial in their newspaper, *The Record-Union*.

The other members of the committee remained silent.

It was by means of this help from Robert Y. Hayne that the disbarment judgment was made to contain the following expressions :

* * “A committee from the Bar Association of San Francisco requested to be allowed to appear ‘for the purpose of seeing that said matter is properly presented,’ and their request was granted. * * * The committee of the Bar Association argued that he should be disbarred.”‡

*See the Appendix p. 20

†See the Appendix p. 32.

‡See the Appendix, p. 22.

"Mr. Philbrook had not only been informed by a brother attorney of the offensive construction which might be put upon his brief, he had been notified at the opening of the proceedings by the argument of Mr. Hayne that such was the construction placed upon it by the committee of the Bar Association, and he was plainly informed from the bench that it was understood in the same way by the Court."*

The plainly evident purpose of that crafty, base and cowardly piece of trickery of Robert Y. Hayne was to bolster the outrage about to be committed by making it appear to the world (though falsely) that the disbarment which was about to be inflicted was approved of by the legal profession, and to have the expressions just quoted inserted in the judgment of disbarment—the plainly evident purpose of so inserting those expressions being to bolster the outrage by making it appear to the world (though falsely) that the disbarment was approved of by the members of my own profession. It was throughout a cowardly piece of trickery. Now take the circumstances. Is it not plain that all that base, cruel and infamous trickery was the work of The Southern Pacific Company?

That a resort to that very trickery had been planned by The Southern Pacific Company as early as the very day when the disbarment proceeding was commenced, may be seen in the news article published in *The Evening Post* on December 7, 1894, in the statement there made that: "The general belief among attorneys is that only the most abject apology will save Philbrook, and it is doubtful if that will satisfy the court."† As already pointed out, so far as stating the "general belief among attorneys," such a statement made at that time was necessarily a falsehood, for that very article

*See the Appendix, p. 32.

†See the Appendix, p. 8.

was the first announcement to the public that such a proceeding had been begun, and the *motive* of that falsehood is self-evident. And the same *motive* appears in the long editorial which was published in *The Record-Union* on December the 20th, and which occupied the entire editorial part of the paper. That editorial is substantially the judgment of disbarment, which was formally made only sixteen days afterwards by the Justices. Substantially all the peculiarly false grounds, all the trickeries, all the peculiar terms and phrases, the identical *motive*, and even the tricks of expression which sixteen days later were placed in the judgment of disbarment, all are in that editorial. And in that editorial the appearance of that committee from the Bar Association of San Francisco in support of the disbarment is used precisely as it is in the judgment of disbarment, and plainly with the same *motive*.*

4. Wm. F. Herrin and the Justices of the Supreme Court.—The Work of The Southern Pacific Company.

Ever since his advancement to the position in 1893, Wm. F. Herrin has been the chief counsel of The Southern Pacific Company, with headquarters at their offices in San Francisco. Wm. F. Herrin is well known in California, and is universally considered to be an embodiment of all the evil policy and evil practices of The Southern Pacific Company. He is well known as being the embodiment of cunning and craft, without conscience, without sentiment, unscrupulous, hard, merciless, quick and accurate in perceiving, and using

*See the Appendix, p. 20.

and cultivating the moral weaknesses of individuals, a shrewd, cunning, unfeeling minister of evil.

Now, during all the time between the issuance of the citation and the making of the judgment of disbarment, Wm. F. Herrin and Thos. B. McFarland, one of the Justices of the Supreme Court, met daily, late in the afternoon, on Bush street between Montgomery and Sansome streets in San Francisco, and would walk slowly back and forth together for a long time engaged in close, private, earnest consultation.

5. The Written Answer to the Citation.

The citation directed me to appear on December 17, 1894. On that day I accordingly appeared in the Supreme Court of California, at San Francisco, and there filed an answer to the citation setting out the brief as filed, giving the facts of the fraudulent confederacy of Mr. Harrison and the Newmans as above stated, pointing out the device embodied in the secret transfer of September 6, 1890, to cut off Mrs. Levinson and her daughters from redress, and showing the evil success in which the device had been worked by the confederates in the Superior Court, both in the decision given by the Superior Court, and in the fact which has been stated above, that certain attorneys who had there begun to assist in presenting the case for the plaintiff had been terrorized into going over treacherously to the side of the two Newmans. The answer also showed, setting out a copy of the evidence and proceedings, that Mrs. Levinson and her daughters, in their appeal to the Probate Court not to authorize payment to those treacherous attorneys, had been met and defeated by

the same outcry that the case in which those attorneys had been employed was an attack on a Justice of the Supreme Court, so that there, also, Mrs. Levinson and her daughters had been made outlaws by the wickedness of Mr. Harrison and his confederates. All this was given to show and illustrate the propriety of the exposition contained in the brief of the villainy of Mr. Harrison as a confederate of the two Newmans. This answer consisted of nearly forty typewritten pages of the size known as legal cap, besides briefs and copies of records filed with it. The answer quoted from the record of the case in which the brief had been filed, the evidence by which it was proved fully and without contradiction that the argument of the brief, and particularly the part charged to be objectionable, was proper and just.

6. My Position at the Time of the Hearing of the Citation.

It is well known that every one who enters the law as a profession and depends upon merit for success must expend much money and must toil most laboriously for many years before his earnings can equal his expenses. If he has a family dependent upon him, they must through all those years undergo with him continual self-denial, buoyed only by the hope of better things at some time in the future. If he hopes to be greatly useful to his friends and fellow men, he must through all those years lack the necessary means. Through such an experience I had gone when the disbarment was so foully and wickedly inflicted upon me. For years I had toiled unremittingly, without a vacation or even a day's respite, laboring through long days

and far into the nights, to do the best for my clients and to perfect myself in my profession. As a result I had at length acquired a comfortable and steadily increasing income. I was free from debt and had a well furnished law office and a good library. I was well known as a lawyer of the best reputation. My situation was well and generally known by the lawyers of San Francisco.

For no other offense than the proper use of my profession, only for properly seeking on behalf of a dead man's helpless family, for a feeble widow and her daughters, justice against their betrayers and despoilers and against the treachery and cowardly cruelty of a high placed rascal, all for which I had made great expenditures of money, all for which my dependent family had waited patiently for years, all for which I had for years toiled and practiced self-denial—all was to be destroyed. It had already been resolved upon before the form of a hearing. My law office was to be broken up, I was to be compelled to sacrifice my library, all my books, even my office furniture. I, who had always been proud never to owe a debt, was to be overwhelmed with debts. I, who had always been to the last degree proud of my good name, was, after being denied a hearing, to be published forever and throughout the world as a criminal. My dependent family—what slow and cruel tortures upon them were already resolved upon! All this was to be laid upon us, not upon even a pretense of my being unfit for my profession, but avowedly as "punishment." All this was to be laid upon us in the name of the State of California, and by means of using to that end the power of all the people of the

State. The false and feigned grounds upon which it was to be done, the very words and phrases of the decree, all had been, before I was allowed to know that any such ground was even thought of, and before even the form of a hearing, published as editorials by The Southern Pacific Company in their newspaper organ *The Record-Union*.

On behalf of my clients, a dead man's helpless family, a feeble widow and her daughters, I had shown that they had been wickedly subjected to treachery and, among other wrongs, deprived of their own for the very purpose of persecuting and torturing them with penury and starvation until, under the compulsion of such cruel, treacherous and cowardly torture, they would submit to being robbed and despoiled. How swift and how terrible was to be my answer! To my dependent family and myself there was to be dealt outrages of the same character and far greater in degree. It was as if our persecutors had said, "You object to the practice of treachery upon this aged widow and her daughters, do you? They shall have no relief, not even a hearing of their case, but as for you, for having presented their complaint, you shall have far greater treachery dealt out to you. You object to their being deprived of their means of a livelihood, and tortured with penury and starvation, do you? They shall have no relief; their case shall not even be heard; but as for you, for having presented their complaint, you shall be deprived of everything which you have acquired, and, though denied a trial, you shall be held up forever before the world as a criminal, and upon you and your dependent family those very tortures of penury, to which you object, shall be inflicted. And all this shall

be done to you as 'punishment' and in the name and by means of the power of a sovereign State of the American Union. And we will so completely close against you every avenue of relief and even the newspapers of the country that your fellowmen shall not be able to compel redress."

In November, 1897, the newspapers contained an account of a murder, near Kansas City—the murder of a little girl three years of age by drowning her in the Missouri river. The murderer was the child's father. He did the murder by tying the little girl's hands and feet with a cord, weighting her with stones, and throwing her in that condition into the Missouri river. He confessed his crime and went willingly to execution. In his confession he said that as he was tying the little one's hands and feet and weighting her with stones, her last words, said to him with trusting, childish innocence, were: "What are you going to do with me, papa?" What he was going to do was to have the innocent, trusting child, a moment later, filled with unspeakable terror and agony, making a desperate, terrible and futile struggle for her little life in the slime and filth beneath the muddy waters of the Missouri, and that, with the heart of a devil, he did. Who shall say that a thought of the injustice, treachery and cruelty of her father did not mingle with her unspeakable terror and agony?

Would any one feel what in its essence treachery is? There it is, in the murder of that little girl. Would any one know what a traitor is? There he is, in that murderer.

Such a traitor has Ralph C. Harrison been to his clients, Mrs. Fanny Levinson and her daughters.

Such a traitor is every false and corrupt and wicked judge.

Up to the very time when the disbarment was inflicted I was as free from even the least sense of danger as was that little child. I also was as puzzled by the disbarment case as she was by the tying of her hands and feet and weighting her with stones. I could not even imagine what it really meant. I did not suppose even for a moment that I was to be disbarred, or that the proceeding would result otherwise than in a complete vindication of my brief and the assurance of justice for Mrs. Levinson and her daughters. I therefore welcomed the proceeding, and, when on the 17th and 18th days of December, 1894, the pretense of a hearing of the citation was allowed, I gladly used the opportunity to exhibit fully the proof of the villainy and wickedness which had been practiced upon them by Justice Ralph C. Harrison—the full and ample justification of everything said in the brief. That I did so is expressly confessed (though not in any spirit of justice) in the judgment of disbarment itself, both in the part signed by five Justices* and, more definitely, in the part written specially by Wm. H. Beatty, the Chief Justice.† Little did I suppose that those whom I was addressing, those sworn by the State to the sacred trust of administering justice, had already, at the instigation of that terrible organization, The Southern Pacific Company, and obedient to their foul orders, with the hearts of devils, resolved upon my destruction, and wickedly were about to consign me to a long and desperate struggle for life through years of torture.

* See the Appendix, p. 22.

† See the Appendix, p. 32 and pp. 32-3.

7. The Judgment of Disbarment.

After going through the pretense of a hearing of the citation on the 17th and 18th days of December, 1894, the disbarment judgment was made on January 5, 1895. Three days later it was published in full in *The Record-Union*, under head lines beginning with the words "A Lawyer Punished." This was backed up with a virulent editorial published in *The Record-Union* on the morning of January the 10th. On January the 10th, later in the day, Wm. H. Beatty, the Chief Justice, filed a special concurrence, and this, also, was backed up with like articles published in *The Record-Union* on January the 14th. All the papers and newspaper articles here referred to are shown verbatim in the Appendix (pp. 22-40).

8. The Trumping Up of New Accusations.

The judgment of disbarment contains six pretended grounds, of none of which was there so much as the pretense of notice or a hearing. The six new accusations here referred to are, in the judgment of disbarment, stated in the following passages:

"It also contains language highly reprehensible concerning the learned Judge of the Superior Court who heard and determined said action at *nisi prius*, and his answer contains such language concerning another learned judge of the Superior Court who decided the other cases mentioned in said Philbrook's answer." *

"As respondent has in the same connection, assailed not only all the members of this Court and the two Superior Judges above referred to, but also certain reputable lawyers who were at one time associated with him in the litigation, and a special administrator who was appointed at his own instance and out of his own office, charity might possibly

* See the Appendix, p. 23.

suggest that he is the victim of abnormal suspicion and distrust." *

"It may not be out of place to say that we have been lenient to the respondent for past offenses of a character similar to the one now before us, though not so flagrant; and that his attention has heretofore been directly called to his disregard of his duties as an attorney in this respect. In a petition for a re-hearing he used disrespectful language towards a Commissioner of the Court who had prepared the opinion in the case, for which, perhaps, he should have been called to account at the time; and more recently we were compelled to strike out his brief in another case for disrespectful language." †

The six new accusations contained in the passages of the disbarment judgment just quoted are the only feature which was not published in advance in the newspapers of The Southern Pacific Company, as above stated. But they were immediately taken up by *The Record-Union* in the editorial of January 10, 1895, and were there supported by the additional lie that "and so say his fellow members of the bar in San Francisco." ‡

And, also, as regards the grounds stated in the judgment of disbarment to the effect that the brief contained a "menace," a "threat," an "assault," "boldly threatens them [the other Justices besides Harrison] with evil consequences to themselves if they should decide the appeal adversely to the appellant," "contains a direct attempt to influence them by threats of injury unless they shall adopt his views of the case," "distinctly threatened the other members of the court with public infamy and disgrace if they did not decide the cause of *Rankin vs. Newman* in his favor." As regards all such grounds the judgment of disbarment was not only pure invention and falsehood and trickery, but was

* See the Appendix, p. 26.

† See the Appendix, p. 28.

‡ See the Appendix, p. 36.

made without previous accusation or notice or hearing. The nearest approach to such notice was a verbal statement made by Wm. H. Beatty, the Chief Justice, *at the close of the mock hearing of the citation which was allowed*, stating that in the brief "You [the accused] tell this Court plainly and explicitly that we must decide this case in your favor or else we shall be held to be corrupt." Such a charge, even if true, would not have been the charge of a "menace" or "threat" or "assault." But, over and above this, "notices must be in writing" (C. C. P., Sec. 1010; Constitution Art. 22, Secs. 1, 11.) It is this trumped up and feigned ground that constitutes the chief of the pretended grounds for the disbarment, and by Wm. H. Beatty, the Chief Justice, it was expressly (though falsely) declared to be the sole ground on which he based his concurrence.* This new and trumped up accusation as stated in the judgment of disbarment may be seen in the Appendix on p. 23, through all of pages 27 and 28 and from pages 29 to 32.

As already mentioned, all these new accusations to the effect that the brief contained a "menace," a "threat" and an "assault" were published in advance in the newspapers of The Southern Pacific Company and were repeated by Robert Y. Hayne at the hearing of the citation, and nowhere else did any such charge appear until those accusations appeared in the judgment of disbarment itself.

The purpose with which those new accusations were inserted in the judgment of disbarment was of course to bolster and cover the outrage by deceiving the public into supposing that there was ground for the disbarment; and it was with the same motive that those

*See the Appendix, pp. 29-30.

accusations were invented by The Southern Pacific Company and published by them in advance in their newspapers, *The Evening Post* and *The Record-Union*.*

The parts of the judgment of disbarment, setting out grounds of none of which there was hearing or notice, so nearly comprise all the grounds that if those parts were removed there would be nothing left that could deceive anybody into supposing that any ground whatever actually existed. But even if those new accusations, accusations appearing for the first time in the judgment of disbarment, comprised only part of the grounds, their effect would be to make the disbarment unlawful to the extent of being in law absolutely void.

A judgment made without notice or hearing as to any of its grounds, is made without notice or hearing, and is in law, as well as in natural justice, wrongful to the extent of being utterly void.†

In *Ziegler vs. S. & N. Ala. R. R. Co.*, 58 Ala., 599, the rule was stated thus:

“Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law.”

A judgment which is unlawful to the extent of being void in any of its grounds, as where one of the Judges

*See the Appendix, pp. 6-21.

†*Ziegler vs. S. & N. Ala. R. R. Co.*, 58 Ala., 599. *Meyers v. Shields*, 61 Fed. Rep., 718. *Mead v. Larkin*, 66 Ala., 87. *Greene v. Briggs*, 1 Curtis. C. C., 331.

was interested as regards that particular ground, is void throughout.*

In the case last cited, the Court said (at p. 344):

"The judgment being single, and grounded upon the two facts as explained by other evidence, we are not at liberty to assume that either of these facts, with its concomitant circumstances, was deemed unessential to the result; and therefore, if Porter was disqualified from sitting to try the charge as it stood upon the refusal to sign his order, it was fatal to the judgment, though it be admitted that he was a lawful trier on the other specification."

A judgment which should be considered unlawful to the extent of being void as regards any influence, as where one of the judges taking part in the decision was interested, is unlawful and void throughout, no matter how many disinterested judges also took part in the decision.†

In *Queen v. Justices of Hertfordshire* 6 Q B. 753, a decision made by twelve Justices was held unlawful and void because one of them was interested. In deciding the case Lord Denman said:

* * * "We cannot enter into an analysis of the different motives which may have produced the decision; it is enough to say that a single interested person has formed part of the court." * * *

A judgment made without previous notice and a hearing is equally unlawful to the extent of being absolutely void, even though the truth of the accusation is personally known by the judges.‡

* *Stockwell v. Township Board of White Lake*, 22 Mich., 341, 344.

† *Queen v. Justices of Hertfordshire*, 6 Q. B. 753. *Meyers v. Shields*, 61 Fed. Rep. 728.

‡ *Capel v. Child* 2 Cr. & J. 558. *Fletcher v. Daingerfield* 20 Cal. 430. *The Railroad Tax Cases* 13 Fed. Rep. 765. *Rex v. Chancellor* 1 Strange 565.

In *Capel v. Child* 2 Cr. & J. 558, the Court said:

* * * "According to every principle of law and equity, such judgment could not be pronounced, or, if pronounced, could not for a moment be sustained, unless the party in the first instance had the opportunity of being heard in his defense.

* * * "When the bishop proceeds on his own knowledge, I am of opinion also that it cannot possibly, and within the meaning of this act, appear to the satisfaction of the bishop and of his own knowledge, unless he gives the party an opportunity of being heard, in answer to that which the bishop states on his own knowledge to be the foundation on which he proceeds. * * * Is it not a common principle in every case which has in itself the character of a judicial proceeding, that the party against whom the judgment is to operate should have an opportunity of being heard?"

In *The Railroad Tax Cases* 13 Fed. Rep. 765 (decided in 1882 by the United States Circuit Court for the District of California), all that part of the Constitution of California providing for the taxation of railroad property was set aside, upon the ground that it did not expressly give the railroad corporations the right to a hearing. In giving the decision Judge Sawyer quoted as an authority the following language of Fortescue, J., in the English Court of King's Bench in the case of *Rex v. Chancellor* 1 Strange 565 (decided in 1718):

"Besides, the objection for want of notice can never be got over. The laws of God and man both give the party an opportunity to make his defense. I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon

Adam before he was called upon to make his defense. *Adam* (says God), where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldst not eat? And the same question was put to *Eve* also."

A judgment disbarring an attorney, if made without previous notice of the grounds and opportunity to be heard, is unlawful to the extent of being absolutely void.*

In *People ex rel. Field v. Turner*, 1 Cal., 150, in the case of Stephen J. Field, the Supreme Court said:

* * * "But where an attorney is proceeded against with this object, he is entitled to have notice of the charges against him, and an opportunity to make his defense. This is not only the dictate of natural justice, and the uniform practice in such cases, but it has been carried into an express adjudication." * * *

A judgment made without previous notice of its grounds and an opportunity to be heard, is violative of natural right, of natural justice, is in law absolutely void and entitled to no respect in any court.

In *Hovey v. Elliott*, 167 U. S. (decided in 1897) the Supreme Court of the United States said (at pp. 413-414):

* * * "The fundamental conception of a court of justice is condemnation only after hearing. To say that courts have inherent power to deny all right to defend an action and to render decrees without any hearing whatever is, in the very nature of things, to convert the court exercising such an authority into an instrument of wrong and oppression, and hence to strip it of that attribute of

**People ex rel. Field v. Turner*, 1 Cal., 143, 150. *People ex rel. Field v. Turner*, 1 Cal., 188-9. *Fletcher v. Daingerfield*, 20 Cal., 430.

justice upon which the exercise of judicial power necessarily depends.

* * * *

"The principle stated in this terse language lies at the foundation of all well ordered systems of jurisprudence. Wherever one is assailed in his person or his property, there he may defend, for the liability and the right are inseparable. This is a principle of natural justice, recognized as such by the common intelligence and conscience of all nations. A sentence of a court pronounced against a party without hearing him, or giving him an opportunity to be heard, is not a judicial determination of his rights and is not entitled to respect in any other tribunal."

In *Baggs Case*, 11 Coke, 99, (decided by Sir Edward Coke in 1616) the removal of a burgess of Plymouth was held void, and a mandamus issued to restore him, and the Court said, among other things:

"And, although they have lawful authority either by charter or prescription to remove anyone from the Freedom, and that they have just cause to remove him, yet if it appear by the return, that they have proceeded against him without hearing him answer to what was objected, or that he was not reasonably warned, such removal was void, and shall not bind the party. * * * And such removal is against justice and right."

In *Violett vs. Alexandria*, 92 Va. (decided in 1896), the Court said (at p. 571):

"It has often been pointedly and emphatically declared that it is contrary to the first principles of justice that one should be condemned unheard."

In *Page vs. Hardin*, 8 B. Mon. (decided in 1848) the

removal of a Secretary of State by the Governor was held unlawful, and the Court said (at p. 672):

“The Secretary being removable for breach of good behavior only, the ascertainment of the breach must precede the removal. In other words, the officer must be convicted of misbehavior in office. And we shall not argue to prove that in a government of law a conviction whereby an individual may be deprived of valuable rights and interests, and may, moreover, be seriously affected in his good name and standing, implies a charge and trial and judgment, and the opportunity of defense and proof.”

In *Black vs. Black*, 4 Bradf. Sur. (decided in 1857) the Court said (at p. 205):

“Notice of some kind is the vital breath to animate judicial jurisdiction over the person. It is the primary element of the application of the judicatory power. It is of the essence of a cause. Without it there cannot be parties, and without parties there may be the form of a sentence but no judgment obligating the person. I think there can be no doubt as to the correctness of this doctrine and its foundation in natural right. It is based upon those principles of justice which are acknowledged wherever right reason has sway.”

In *Meyers vs. Shields*, 61 Fed. Rep. (decided in 1894) the Court said (at p. 718):

“One principle runs through all these definitions [of due process of law]. Webster expresses it tersely when he says: ‘By the “law of the land” is meant the “general law,” which hears before it condemns, which proceeds upon inquiry, and reaches judgment only on trial.’ The party to be affected by the process which deprives him of his life, lib-

erty or property must have notice of the time and place of hearing in some form and at some time, and must have the privilege of being heard."

In the *Railroad Tax Cases*, 13 Fed. Rep., Justice Field, in giving judgment in favor of The Southern Pacific Railroad Company, said (at pp. 750-752):

* * "There is something repugnant to all notions of justice in the doctrine that any body of men can be clothed with the power of finally determining the value of another's property, according to which it may be taxed, without affording to him an opportunity of being heard respecting the correctness of their action. * * * We cannot consent to any such doctrine. It conflicts with the great principle which lies at the foundation of all just government, that no one shall be deprived of his life, his liberty or his property, without an opportunity of being heard against the proceeding. The principle is as old as *Magna Charta*, and is embodied in all the State constitutions, and in the fourteenth amendment of the federal constitution. * * * And by due process of law is meant one which, following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained, and it must give to the party to be affected an opportunity of being heard respecting the justice of the judgment sought. Without these conditions entering into the proceeding, it would be anything but due process. If it touched life or liberty it would be wanton punishment, or rather wanton cruelty; if it touched property it would be arbitrary exaction."

In the same case Judge Sawyer said (at pp. 762-3):

"No one, I apprehend, would for a moment con-

tend that a man's life or his liberty could be legally taken away without notice of the proceeding or without being offered an opportunity to be heard, or that a proceeding whereby his life or liberty should be forfeited or permanently affected, without notice or opportunity to be heard in his own defense, could by any possibility be due process of law. In such cases there could be no just conception of 'due process of law' that would not embrace these elements of notice and opportunity to be heard. Any conception excluding these elements would be abhorrent to all our ideas of either law or justice. If these elements must enter into and constitute an essential part of due process of law, in respect to life and liberty, they must also constitute essential ingredients in due process of law where property is to be taken, for the guaranty in the constitution is found in the same provision, in the same connection, and in the identical language applicable to all."

An opportunity to be heard *after* the judgment, in no wise detracts from the unlawful and outrageous character of such a judgment.*

In *Capel vs. Child* 2 Cr. & J. the Court says:

* * "Then it was said in answer to the arguments at the bar, that the party had a right to appeal to the Archbishop. I apprehend the right to appeal to the Archbishop makes no difference in this case. Where there is an authority to pronounce a judgment, and an appeal is given from that judgment when it is pronounced, the party against whom the judgment is pronounced has a right to be heard on the original judgment: he has a right to be heard before the original judgment is

* *Capel vs. Child* 2 Cr. & J. 558. *In re Dana* 7 Ben. D. C. 1. *Meyers vs. Shields* 61 Fed. Rep. 724.

pronounced, for the purpose of preventing that judgment from being pronounced."

In *Meyers vs. Shields* 61 Fed. 724 a certain tax amounting to upwards of \$184,000.00 assessed against a party, was set aside by the United States Circuit Court for the Northern District of Ohio, upon the ground that the law authorizing the tax was unconstitutional in not expressly giving the taxpayer the right to a notice and hearing previous to the assessment. The Court said:

"It [the tax] stands as a charge upon his property, a cloud upon the title of his real estate, a blot upon his character as a citizen, and yet it is claimed it is 'due process of law' because if it is sought to enforce collection of such taxes by a suit in court, the taxpayer will have notice of such proceedings, and may then defend against the *prima facie* case of guilt and indebtedness arbitrarily found against him. All the other summary remedies for collection provided by law are open to the treasurer, and may at any time be enforced; and unless the taxpayer assumes the burden of removing the cloud upon his title and the lien upon his property by affirmative action, they stand as a menace to his credit and right of possession of his property, and as 'due process of law,' because of his right to notice and defense, provided the treasurer chooses to resort to the remedy of a suit in court. This is not the right to appear and make defense at the time when it is most valuable and efficient. It is a right to defend after judgment and conviction."

If the statute were silent upon the subject of the right to a previous notice and an opportunity to be heard, it would give such right by necessary implication.*

* *Capel vs. Child*, 2 Cr. & J. 558. *Chase vs. Hathaway*, 14 Mass., 222. *Mead vs. Larkin*, 66 Ala., 88.

In *Capel vs. Child*, 2 Cr. & J. the Court said:

* * * “does not this import inquiry and a judgment as the result of that inquiry? * * * It is in form a judgment; it is in effect and consequence a judgment. It appears to me, therefore, considering the principles of justice, that this construction of the act could hardly be more necessary, if it had been absolutely required by the language of the act that a previous summons should be issued.”

In *Chase vs. Hathaway*, 14 Mass., the Court said:

“But we are of opinion that, notwithstanding the silence of the statute, no decree of a probate court so materially affecting the rights of property and the person can be valid, unless the party to be affected has had an opportunity to be heard in defense of his rights.

“It is a fundamental principle of justice essential to every free government, that every citizen shall be maintained in the enjoyment of his liberty and property, unless he has forfeited them by the standing laws of the community, and has had opportunity to answer such charges as, according to those laws, will justify a forfeiture or suspension of them. And whenever the legislature has provided that, on account of crime or misfortune, the public safety or convenience demands a suspension of these essential rights of the individual, and has provided a judicial process by which the fact shall be ascertained, it is to be understood as required that the tribunal, to which is committed the duty of inquiring and determining, shall give opportunity to the subject to be heard in support of his innocence or his capacity.”

In *Mead vs. Larkin*, 66 Ala., 88, the Court said:

* * * “Whenever, in a judicial proceeding, a

judgment is rendered by a court of justice, affecting the liberty, or condemning the property of any person, he is entitled to have reasonable notice of such procedure, trial or contest. * * * Where the statute is silent, as to notice in such cases, it will be supplied by necessary implication."

The same principle was declared by Crompton J. in *Queen vs. Archbishop of Canterbury*, 1, Ellis & Ellis, 545, in the following words:

* * "Where a statute of this kind gives an appeal, it gives, by implication, a right to be heard upon that appeal." * *

Here there may be conveniently seen the difference between the administration of justice to a powerful and wealthy corporation and to an ordinary citizen. In the *Railroad Tax Cases*, 13 Fed. Rep., the Circuit Court of the United States for the District of California, by Justice Field and Judge Sawyer, in 1882, set aside at the suit of The Southern Pacific Railroad Company, all that part of the Constitution of California, providing for taxing railroad property, and *one ground was that there was no express provision for notice and hearing*. For the benefit of that corporation and its wealthy and powerful allies, the rule of law was ignored, that where no provision for notice and a hearing is made expressly, the right to notice and a hearing is given by implication. In the case stated in this paper, Mrs. Fanny Levinson, Julia Levinson and Ada Levinson, citizens of the United States, and their attorney, himself a citizen of the United States, have been deliberately subjected to ruinous judgments made upon false grounds and after being denied a hearing—have been denied relief from the actual commission of outrage upon

outrage—and this has all been instigated and supported by the organization of corporations of which The Southern Pacific Railroad Company is a part.

It may be noted at this point that, in law, it is not within the power of a legislature in the United States, or even of the people of a State, to authorize a judgment to be made without a previous notice and an opportunity to be heard upon every one of its grounds or elements.*

The right to be heard in one's defense before being subjected to an adverse judgment of a court—the right to be heard upon every ground upon which such judgment is to be made—is plainly the fundamental and inalienable right of self defense, a right so fundamental and incapable of being surrendered that it is not only recognized as such in the laws of all nations, but is spontaneously claimed and exercised to the uttermost by every human being and by every animal as well. It is this fundamental and inalienable right that, in the case here exhibited, the corrupt and wicked authors of the disbarment and of the decision of the case in which the brief was filed, have deliberately and wickedly caused to be by the State of California denied to the disbarred attorney and to the three defenseless women, his clients.

9. No Truthful Cause for the Disbarment.

- (1) **That the Citation Stated No Cause for the Disbarment Is In Fact Admitted In the Judgment Itself.**

The insertion of so many entirely new accusations in the judgment of disbarment is a manifest confession

*Constitution of the United States, Amendments 5, 14. *Hovey vs. Elliott*, 167 U. S. 417.

that no sufficient ground for the disbarment had been found in the matter charged in the citation.

The trickery of supporting the disbarment by a "committee of the Bar Association of San Francisco" is plainly another confession of the same sort.

(2) **The Passage of the Brief Quoted in the Citation.**

In his speech on the judicial tenure delivered in 1853 in the Massachusetts State Convention, Rufus Choate, in speaking of what is requisite in a Judge, said:

"And, finally, he must possess the perfect confidence of the community, that he bear not the sword in vain. To be honest, to be no respecter of persons, is not yet enough. He must be believed such." * *

In *Fairfield Co. Bar vs. Taylor* (60 Conn. at p. 17) the Court said:

"It is not enough for an attorney that he be honest. He must be that and more. He must be believed to be honest." * *

In the case of *Rex vs. Wilkes* (4 Burr. 2545) Lord Mansfield, in giving judgment, said:

* * * "The matter deserves to be seriously considered. What is determined upon solemn argument establishes the law, and makes a precedent for future caees. * * *This* will be a precedent."

Now consider the passage of the brief quoted in the order citing the attorney to appear. The passage is shown in full on page 5 of the Appendix. What is it but a proper statement of the rule of law that contriv-

ances to put a wrongful influence upon judges to influence their decisions are illegal, a proper statement of the principle upon which the rule is founded, and that a decision of the case upholding such a contrivance would establish it to be the law that such contrivances are permissible and of what would follow as the necessary result of having such practices established as lawful?

(3) The Deliberate and Wicked Falsification of the Attorney's Argument.

Could anything be plainer or more plainly proper than the argument of the brief which the decision in *Egerton vs. Earl Brownlow* was cited and quoted to sustain and illustrate?

This is particularly shown on pages 79-96 above.

It is this plain and manifestly just argument that, in the judgment of disbarment—adopting the identical invention, the identical arts and even the identical terms and phrases and tricks of expression previously set out as editorials in *The Record-Union*—is falsified into “threats,” “menaces” and an “assault” upon the court, as “language contemptuous of all the other Justices of the Court, in that it broadly intimates that they may be improperly influenced in deciding said appeal, and boldly threatens them with evil consequences to themselves if they should decide the appeal adversely to the appellant.”

This wicked falsification of the brief is carried out with far the greater skill and cunning in the part of the judgment of disbarment signed by five Justices. There, not only is the decision in *Egerton vs. Earl Brownlow* studiously ignored, but any allusion to the

principle of that decision, any allusion to the great rule of law and great principle of natural justice applied and so remarkably illustrated in that decision—any such allusion is carefully avoided.

In the part written by Wm. H. Beatty, the Chief Justice, the same evil arts are wickedly practiced, but with far less skill. Equally with his associates he follows *The Record-Union* and carefully avoids the case of *Egerton vs. Earl Brownlow*, but he does allude to the rule of law and principle of justice which was there so finely exhibited. He alludes to it only to state it with gross and insolent and brutal falsehood and to try to make it appear ridiculous. This occurs in the following language:

“He claims—and I fully concede the claim—that if a Justice of this court has been a party, or attorney, or witness, or in any other manner so connected with a cause which is on appeal here as justly to subject him to criticism, counsel charged with the presentation of such cause must be allowed the same freedom of criticism as in the case of any other person [See his hypocrisy]. But the logic of this proposition is that the fact that such party or witness is a member of this court is wholly irrelevant; it has nothing to do with the case [See how dishonestly he evades the rule of law applied in *Egerton vs. Earl Brownlow*]. Mr. Philbrook, however, does not hold himself bound by the logic of his proposition [See the same dishonest evasion]. He does not criticise Justice Harrison’s conduct as attorney for Levinson’s executor the same as if he were not a member of this court, but apparently *because* he is a member of the court [See the same dishonest evasion] he assails him with the bitterest invective for the purpose of giving point and force to the proposition to which his whole argument tends [See the same dishonest evasion and a wicked misrepresentation of the brief] that we cannot affirm the order of the Superior Court without making ourselves participants of the fraud which he charges, and thereby giving all men reason to know that the courts of the country are corrupt.

“In this consists the offense,” etc.*

*See the Appendix, pp. 29-30.

"The proposition of law for which Mr. Philbrook contends, viz., that, notwithstanding such settlement may have been entirely free from fraud, in fact it must be held fraudulent in law—a constructive fraud—because advised and witnessed by a gentlemen who was then a candidate for the Supreme bench [See the maliciously false statement of the principle applied in *Egerton vs. Earl Brownlow*, maliciously trying to make it seem ridiculous], is one which it is open for him to argue [See the insolent hypocrisy; the disbarment, of course, made it impossible for the attorney to argue], and since it is involved in the appeal in *Rankin vs. Newman* [See the hypocrisy], I express no opinion concerning it."*

(4.) **The False Use of the Words "Threat," "Menace" and "Assault."**

But even if the language of the brief had been susceptible of the meaning so falsely and wickedly imputed to it in the judgment of disbarment, viz., that if the case should be decided for the two Newmans, the Justices by whom such decision might be made would be thereby known as corrupt, even such meaning would not constitute a "menace" or "threat."

In *Bouvier's Institutes* (§2234) it is said:

"A menace or threat is a malicious declaration of an intention to do an injury unlawfully to another."

In *Payne vs. Railroad Company*, 13 Lea (Tenn.), 321, a merchant sued a railroad corporation for destroying his business by threats and intimidations to his customers. He showed that the corporation had announced to its employees that it would discharge any of them who should trade with him, and that by so doing it had destroyed his business. The Court ruled for the railroad company, upon the ground that there

*See the Appendix, p. 33.

was no threat or intimidation, because the railroad company had the legal right to discharge its employees irrespective of its motive in so doing. The Court said:

* * "But 'threats and intimidations' must be taken in their legal sense. In law a threat is a declaration of an intention or determination to injure another by the commission of some unlawful act, and an intimidation is the act of making one timid or fearful by such declaration."

The words "threat" and "menace" are identical in meaning; and in all the dictionaries the meaning given these words is that stated in the two authorities last above quoted. And every person of common intelligence, if he stops to reflect, will see for himself that such is the meaning of the words.

Consider now the false, deceitful and dishonest use of these words in the judgment of disbarment. Two examples will suffice. In the part signed by five Justices, the language of the brief is declared to be

* * "a menace that the decision of a cause a certain way will destroy or grealy injure the good name of the Judge who shall make it."*

In the part specially written by Wm. H. Beatty, the Chief Justice:

* * "he distinctly threatened the other members of the Court with public infamy and disgrace if they did not decide the cause of Rankin vs. Newman in his favor. * * * the proposition to which his whole argument tends, that we can not affirm the order of the Superior Court without making ourselves participants of the fraud which he charges."†

Is not that plainly a false, deceitful and wickedly dishonest use of the words "menace" and "threat"? We

* See the Appendix p. 28.

† See the Appendix p. 30.

may illustrate this very simply. Suppose we were to say to a man: "It is about to rain. If you do not hurry home, you will be rained upon and drenched." By so doing would we be *threatening* and *menacing* the man so addressed?

This peculiarly false use of the words "menace" and "threat" was invented by The Southern Pacific Company and published by them in *The Evening Post* and *The Record-Union* and was taken thence and placed in the judgment of disbarment (See the Appendix pp. 6-21).

Now, consider also the charge in the judgment of disbarment that the language of the brief was an "assault upon Justice Harrison"—"the outrageous verbal assaults which he has made upon a member of this Court."

In *Pollock on Torts* (Webb's Ed.) at p. 254, it is said:

"Words can not of themselves amount to an assault under any circumstances."

In *Meade's Case* (1 Larkin C. C., 185) the Court said:

* * "but no *words* or *singing* are equivalent to an assault, nor will they authorize an assault in return."

In *State vs. Davis*, 1 Iredell, 127, (decided in 1840) the Court said:

* * "it is now settled that no words can, of themselves, amount to an assault."

In *People vs. Lilley* (43 Mich., 525) the Court said:

"An assault is defined to be an inchoate violence to the person of another, with the present means of carrying the violence into effect. Threats are

not sufficient; there must be proof of violence actually offered."

In *Smith vs. The State*, (39 Miss., 525) the Court said:

"Hence no words, of themselves, can amount to an assault."

In connection with these decisions, see the language of the judgment of disbarment shown on page 26 of the Appendix,—“the outrageous verbal assaults which he has made upon a member of this Court.” It is into such an idiotic contradiction in terms—“verbal assaults”—that these catspaws of The Southern Pacific Company have run by abjectly following *The Record-Union*.*

And now, suppose that the brief had said even explicitly that if the case should be decided for the two Newmans, the authors of the decision would thereby be known to be corrupt. Even if it had, would it have been anything less than outrage to make that a pretext for disbarring the author of the brief?

In deciding the case of *Rex vs. Wilkes*, 4 Burr, 2561, Lord Mansfield said:

“All men can judge of it; and would treat with contempt the judgment of this sovereign Court, if it could be founded on so pitiful a prevarication.”

Was Lord Mansfield *threatening* and *menacing* himself? Should he have been impeached and removed for so doing?

In *Stockwell vs. The Tp. Board of White Lake* (22 Mich., 350) the Court said:

* See the Appendix pp. 10, 14, 15.

* * “the Court ought not to be astute to discover refined and subtle distinctions to save a case from the operation of the maxim, when the principle it embodies bespeaks the propriety of its application. The immediate rights of the litigants are not the only objects of the rule. A sound public policy, which is interested in preserving every tribunal appointed by law from discredit, imperiously demands its observance.”

Here the same question can be put. In using this language, was the Supreme Court of Michigan *threatening* and *menacing* itself?

In Volume XI of the Works of Edmund Burke (Little, Brown & Co.'s ed.) there may be seen the following passages in the speech of that finished advocate, delivered at the trial of Warren Hastings in the House of Lords:

At p. 160:

“My Lords, far from us, I will add, be that false and affected candor that is eternally in treaty with crime—that half virtue which, like the ambiguous animal that flies about in the twilight of a compromise between day and night, is to a just man's eye an odious and disgusting thing. There is no middle point in which the Commons of Great Britain can meet tyranny and oppression. No, we never shall (nor can we conceive that we ever should) pass from this bar without indignation, without rage and despair, if the House of Commons shall, upon such a defense as has been here made, against such a charge as they have produced, be foiled, baffled and defeated. No, my Lords, we never could forget it; a long, lasting, deep, bitter memory of it would sink into our minds.

“My Lords, the Commons of Great Britain have

no doubt upon this subject. We came hither to call for justice, not to solve a problem; and if justice be denied us, the accused is not acquitted, but the tribunal is condemned. We know that this man is guilty of all the crimes which he stands accused of by us."

At pp. 180-181:

"We call upon your lordships to join us; and we have no doubt that you will feel the same sympathy that we feel, or (what I cannot persuade my soul to think or my mouth to utter) you will be identified with the criminal whose crimes you excuse, and rolled with him in all the pollution of Indian guilt from generation to generation."

Did any one ever pretend that for such language Edmund Burke ought to have been utterly ruined and destroyed? Or that he ought even to have been censured for it? Of course not. On the contrary, the passages have been printed in every edition of his works, and no one ever thought of there being anything culpable in them.

In the trial of Verres, Cicero in one of his most admired orations said, addressing the Judges:

"If this unheard of insolence of Verres is to pass unpunished, all men will think, especially as the reputation of our men for avarice and covetousness has been very extensively spread, that it is not his crime only, but that of those who have approved of it."

(5.) The Rank Dishonesty and Chicane of the Language Used in the Judgement of Disbarment—The Infamous Falsehood that the Brief "Threatened" and "Menaced" and "Assaulted" the Court.

To show the extreme outrage of any of the new accusations in the judgment of disbarment, it would

be enough to show that it is a new accusation, inserted without any previous notice of it to the accused and without giving him a hearing upon it. This has been shown. And, as has also been pointed out, the pretense as a ground of the disbarment that the brief *threatened* and *menaced* and *assaulted* the Court was inserted in the judgment of disbarment as a new accusation, no such accusation having been made in the citation. As already pointed out, it was an invention of The Southern Pacific Company, published by them before the hearing of the citation, in editorials in their newspapers, *The Evening Post* and *The Record-Union*.

It is now proper to show that all this pretense as a ground of the disbarment is a most infamous piece of lying, and that it is bolstered up by the rankest dishonesty, lying and trickery in the judgment of disbarment.

In the first treatise upon logic that has come down to us, that of Aristotle, composed in the fourth century, B. C., there are described certain tricks or fallacies, called sophisms, by means of which language may be dishonestly used to deceive. Two of the most effective of the tricks there described are the two typical deductive fallacies the *petitio principii* (covert assumption) and *ignoratio elenchi* (irrelevant argument). Prof. Minto, in his treatise on logic, defines the *petitio principii* as "covertly taking for granted, as if it were true, some falsity necessary to the conclusion sought to be established"; and he says: "The only remedy for *covert assumptions* is to force them into the light." Prof. Minto then says:

"*Ignoratio Elenchi*, ignoring the refutation, is simply arguing beside the point, distracting the attention by irrelevant considerations. It often succeeds by proving some other conclusion which is not the one in dispute, but has a superficial resemblance to it, or is more or less remotely connected with it.

"It is easier to explain what these fallacies consist in than to illustrate them convincingly. It is chiefly in long arguments that the mischief is done. * * * A certain conclusion is in dispute, not very definitely formulated perhaps, and a mixed host of considerations are tumbled out before us. If we were perfectly clear-headed persons, capable of protracted concentration of attention, incapable of bewilderment, always on the alert, never in a hurry, never over-excited, absolutely without prejudice, we should keep our attention fixed upon two things while listening to an argument, the point to be proved and the necessary premises. We should hold the point clearly in our minds, and watch indefatigably for the corroborating propositions. But none of us being capable of this, all of us being subject to bewilderment by a rapid whirl of statements, and all of us biased more or less for or against a conclusion, the sophist has facilities for doing two things—taking for granted that he has stated the required premises (*petitio principii*), and proving to perfect demonstration something which is not the point in dispute, but which we are made to mistake for it (*ignoratio elenchi*).

* * "If we are not familiar with the matter of the argument, and have but a vague hold of the words employed, we are of course much more easily imposed upon.

"The famous sophisms of antiquity show the fascination exercised over us by proving something, no matter how irrelevant. If certain steps

in an argument are sound, we seem to be fascinated by them so that we cannot apply our minds to the error, just as our senses are fascinated by an expert juggler."

The judgment of disbarment contains a perfect and most rascally example of the combined use of both the tricks thus described. The language is made to suggest and say falsely, with crafty and cunning indirection, by *covert assumption*, that the language in the brief meant that if the case should be decided for the two Newmans, the Justices making the decision would be known to be corrupt. This was an outrageous falsehood to begin with. Upon this falsehood as a foundation, two tricks or fallacies are set up and used in combination. The one is a *petitio principii*, a false use of the words "threat," "menace" and "assault," a covert assumption that to argue "that the decision of a cause a certain way will destroy or greatly injure the good name of the judge who shall make it" is a "menace," a "threat"—all for the purpose of taking against the attorney who was being so wickedly destroyed, both in his profession and his good name, a crafty and dishonest and wicked advantage of the proneness of human beings, even those who suppose themselves to be educated and intelligent, to be duped by false suggestions and covert assumptions and the false use of words. The other trick, used in combination with that just stated, is an *ignoratio elenchi*, the irrelevant argument that an attorney who seeks to win cases by menacing and threatening the judges ought to be disbarred.

In the part of the judgment of disbarment signed by five Justices, the two tricks are the more cunningly

intermingled and masked, an example of which may be seen in the following passage :

* * "This is a palpable attempt to influence a decision of this Court by base appeals to the supposed timidity of its Justices, and made, too, by an officer of the court. It is intolerable. It cannot be suffered by any occupant of the bench who has a just sense of his duty to the people to preserve the due dignity of their courts and the free course of justice. An attempt to influence a Judge through fear of physical injury is no graver an offense than such an attempt against his reputation. A high-spirited man might have perfect physical courage and yet might possibly, despite all his efforts against it, be to some extent insensibly affected by dread of the loss of his reputation and good name. Neither attempt can be for a moment countenanced without a manifest injury to the cause of justice. When people come into courts as litigants they have the right to expect the best judgments of their Judges, uninfluenced except by legitimate arguments made openly before them by counsel. And clearly nothing *tends* more to disturb that impartiality than a menace that the decision of a cause a certain way will destroy or greatly injure the good name of the Judge who shall make it.*

In the part expressing the concurrence of Wm. H. Beatty, the Chief Justice, the work is more crude. There is first the irrelevant argument, the *ignoratio elenchi*, as follows :

"If an attorney were to approach a court or Judge with the offer of a bribe to decide a cause in his favor, or if he were to menace a Judge with personal violence or pecuniary loss if he decided against him, it cannot be doubted that all men would concede the propriety of depriving him of his privileges as an attorney." * * †

And next he returns to what is more strictly the *covert assumption* that the brief contained a "menace," a "threat," the *petitio principii*, as follows :

* * "and if this is so it cannot be denied that some penalty is incurred by an attorney who reinforces his argument by

*See the Appendix, pp. 27-28.

† See the Appendix p. 31.

announcing to the Court with endless repetition that an adverse decision will make the Judges participants of a fraud and sharers in the infamy of its perpetrators." *

And next he mingles the two tricks, as follows :

"It is not necessary, however, to elaborate this proposition. It is plainly enough set forth in the opinion of the Court [*i. e.*, the part signed by five Justices], and does not even need exposition, for it must be obvious to the meanest apprehension that threats or menaces of any character addressed to a Court as a part of, or in aid of, the argument upon the law and facts of a case is an obstruction to the free and unbiased consideration which every cause should receive ; and that if such means of influencing the action of the Court should become common, as they might if allowed to pass unrebuked, no rights would remain secure." †

And further on he returns to the trickery of covert assumption, the *petitio principii*, as in the following language :

* * "He claims, of course, not to have understood until his attention was called to it by a brother attorney during a recess of the court taken just before the close of his argument, that he was charged with having menaced the Judges with any disagreeable consequences to themselves in case of an adverse decision. He asks us to believe that, with one of the most offensive passages of his brief set before his eyes in the terms of the citation, and with ten days for the careful reconsideration which he says in his answer he has given to the matter, he never saw what is patent to the observation of every one else." ‡

And in the next two paragraphs he follows with the same trickery of *covert assumption*.

The passages above quoted are but examples, but they illustrate clearly all this feature of the entire judgment of disbarment. It is the malevolent jugglery of infamous scoundrels. The purpose of it all was to take against the attorney who was being so wickedly

*See the Appendix, p. 31.

†See the Appendix, p. 31.

‡See the Appendix pp. 31-32.

outraged a wicked advantage of the proneness of people to be duped by false suggestions and the false use of words and to be deceived, as if fascinated by the tricks of an expert juggler, by being shown something irrelevant, cunningly tricked up by *covert assumption* into a false and deceitful appearance of relevancy. Notice, also, throughout the judgment of disbarment, the studious mixing up and involving of the reasons given—to use the words of Prof. Minto, “a mixed host of considerations are tumbled out”—the studious subjecting of the reader to “bewilderment by a rapid whirl of statements.”

And in this connection, let it be borne in mind that the language of the brief which was made the ground of the disbarment was expressly based upon the rule of law and principle of natural justice illustrated by the decision of the case of *Egerton vs. Earl Brownlow* 4 H. L. C. 235—that the brief stated fully the decision in *Egerton vs. Earl Brownlow* and quoted extensively the language of the judges, and compared the case point by point with that case—all of which is pointed out on pages 79–96 above. And let it be borne in mind that that authority and the rule of law and of natural justice thus urged in the brief, and all that argument—that *all this has been throughout studiously and with infamous dishonesty ignored and avoided by the authors of the disbarment.*

In connection with what is here pointed out, let now the judgment of disbarment be examined. Is it not plain and indisputable that the pretense that the brief *threatened* and *menaced* and *assaulted* the court is, not only a new accusation inserted in the judgment of disbarment without previous notice or hearing, not only

the invention of The Southern Pacific Company, and as such published in advance as editorials in their newspapers, but that it is a carefully worked up piece of most infamous lying, an infamously wicked misrepresentation of a proper and just argument made in the brief, a falsehood built and bolstered up with the rankest dishonesty, lying and trickery in the judgment of disbarment?

The plainly evident purpose with which the deceits and trickeries in the use of language which have just been pointed out were inserted in the judgment of disbarment was to deceive and mislead those who should read it and thereby both to bolster the disbarment by falsely inducing the public to suppose that it was inflicted for good cause and at the same time to divert attention from the fraud and treachery and wicked use of his office as Associate Justice of the Supreme Court of the State which were being practiced by the Justice Ralph C. Harrison upon Mrs. Fanny Levinson and her daughters.

And it was all adopted, all copied, both the idea and the very phrases and tricks of expressions taken, and the *motive* also, from the editorials previously published in *The Record-Union*, the newspaper organ of the gigantic organization of predatory corporations, The Southern Pacific Company, a newspaper organ published under the immediate supervision of Wm. H. Mills, one of the chief officers of The Southern Pacific Company.

**(6.) The Impossibility of the "Threats," "Menaces" and "Assaults"
Charged in the Judgment of Disbarment.**

When the brief was filed (November 30, 1894) and when the disbarment was inflicted (January 5, 1895),

the terms of offices of two of the Justices (John J. De Haven and Wm. F. Fitzgerald) were about to expire. The day on which the judgment was rendered was the very last day on which either John J. De Haven or Wm. F. Fitzgerald was to act as a Justice of the Supreme Court of California. It was therefore certain that neither of those two Justices could take any part in deciding or hearing the case in which the brief was filed. How, then, could the brief be any *threat* or *menace* to Justice John J. DeHaven or to Justice Wm. F. Fitzgerald or any *assault* upon either of those two? But the judgment of disbarment declares (in the part signed by five Justices):

“The objectionable parts of the said brief for which respondent Philbrook was cited as aforesaid consist mainly :
* * * 2d. Of language contemptuous of all the other Justices of the Court [*i. e.*, of *all besides Harrison*], in that it broadly intimates that they [“they” includes De Haven and Fitzgerald] may be improperly influenced in deciding said appeal, and boldly threatens them [including De Haven and Fitzgerald] with evil consequences to themselves if they should decide the appeal adversely to the appellant.”*

And again:

“As respondent has, in the same connection, assailed not only all the members of this Court,” etc.†

And (in the part specially written by Wm. H. Beatty, the Chief Justice):

“Mr. Philbrook did not confine himself to an assault upon Justice Harrison. * * * He went much further; he distinctly threatened the other members of the Court [*i. e.*, including De Haven and Fitzgerald] with public infamy and disgrace if they did not decide the cause of *Rankin vs. Newman* in his favor.”‡

Compare this with Æsop's fable of the Wolf and the Lamb, given in division 21 of this chapter.

*See the Appendix p. 23.

†See the Appendix, p. 26.

‡See the Appendix, p. 30.

(7.) The Brief Never in Fact Submitted to the Court. The Impossibility of the "Threats," "Menaces" and "Assaults" Charged in the Judgment of Disbarment.

It is to be noted that the offense charged was only the filing of the brief in the Clerk's office. The brief had never been submitted to or laid before the Court or any of the Justices, and the case in which the brief was filed had not been heard or even set for hearing.

In *Bagg's Case* 11 Coke 93 (decided in 1616) the removal of a burgess of Plymouth was held void for various reasons, one of which the court stated as follows:

"So if he intends or endeavors of himself, or conspires with others, to do a thing against the duty or trust of his freedom, and to the prejudice of the public good of the city or borough, but he doth not execute it, it is a good cause to punish him, as is aforesaid, but not to disfranchise him. * * And the reason and cause thereof is, that when a man is a freeman of a city or borough, he has a freehold in his freedom for his life, and with others, in their politic capacity, has an inheritance in the lands of the said corporation and interest in their goods, and perhaps it concerns his trade and means of living and his credit and estimation, and therefore the matter which shall be the cause of his disfranchisement ought to be an act or deed, and not a conation or an endeavor, which he may repent of before the execution of it, and from whence no prejudice ensues; and they who have offices of trust and confidence shall not forfeit them by endeavors and intentions to do acts, although they declare them by express words, unless the act itself shall ensue, as if one who has the keeping of a park should say that he will kill all the game within his custody, or will cut down so many trees within the park, but doth not kill

any of the game nor cut down any trees, etc., etc., etc. * * But if it is but a conation or endeavor, without any act done, in none of those cases is it any cause of deprivation." * * (Citing many examples and decisions.)

In the fact that the brief was never submitted to or laid before the Court or any of the justices, there may be again seen the impossibility of the "threats," "menaces," and "assaults" charged in the newspaper articles of The Southern Pacific Company, and in the judgment of disbarment. Compare this with Æsop's fable of the Wolf and the Lamb, given in division 21 of this chapter.

(8.) The Use of Plain, forcible and Criminatory Language in Exposing the Fraud, Treachery, Oppression and Corrupt and Wicked Practices that Constitute a Chief Feature of the Case.

A main ground of the disbarment, as stated in the judgment, is what is there declared to be the "unbridled license," the "unwarrantable language," the "bitterest invective" of the brief.

That the language of the brief was plain, forcible and criminatory is, in the part of the judgment of disbarment signed by five Justices, called "the outrageous verbal assaults which he has made upon a member of this Court,"* and, in the part written specially by Wm. H. Beatty, the Chief Justice, it is called "Mr. Philbrook's assault upon a member of this Court."† As already mentioned, these terms were invented by The Southern Pacific Company and published in *The*

*See the Appendix, p. 26.

†See the Appendix, p. 29.

Record-Union on December the 13th, four days before the mock hearing of the citation.*

In *The Record-Union* this ground for the disbarment is based upon the pretense that the conduct of Ralph C. Harrison, discussed in the brief, was proper conduct; the disbarment was demanded as a shield for Ralph C. Harrison. And that very position thus taken in *The Record-Union*, four days before the mock hearing, is followed with the utmost precision in the judgment of disbarment, both in the part signed by five Justices (see the Appendix, p. 26) and in that written specially by Wm. H. Beatty, the Chief Justice (Id. pp. 29, 32-34).

This feature of the brief is one of the chief elements, which, in the editorials in *The Record-Union* and as taken thence and placed in the judgment of disbarment, has been used to construct the infamous falsehood that the brief *threatened* and *menaced* and *assaulted* the Court.

In the part of the disbarment judgment signed by five Justices all this may be seen in the following language (Appendix, pp. 26, 27, 28):

* * "he has been unable to show any ground, any decent pretext for the outrageous verbal assaults which he has made upon a member of this Court. Nothing appears in connection with the transaction so often alluded to in the brief which places Justice Harrison in any other light than that of an upright and honorable lawyer, faithfully attending to the interests of his client, and advising him according to his best judgment. * * * The parts of the brief to which we have alluded are **therefore** contemptuous and unbearable and entirely unwarranted under any claim of free speech. * * * When there is such unwarrantable language it is manifest that it was used *because* the person assailed was a Justice of this Court, and with intent to commit a contempt of this Court. * *

*See the Appendix, pp. 10-15, also pp. 16-21.

* * "This is a palpable attempt to influence a decision of this Court by base appeals to the supposed timidity of its Justices, and made, too, by an officer of the Court. It is intolerable. It cannot be suffered by any occupant of the bench who has a just sense of his duty to the people to preserve the due dignity of their courts and the free course of justice. [All this is then with great cunning worked up and up and up until the climax is stated thus (Appendix, p. 28)]: and clearly nothing *tends* more to disturb that impartiality than a menace that the decision of a cause a certain way will destroy or greatly injure the good name of the Judge who shall make it."

In the language last quoted there can be seen the whole structure, from foundation to top, of the infamous falsehood that the brief *threatened* and *menaced* and *assaulted* the Court. And there too can be seen the purpose of the whole infamous structure, namely, to shield the infamous scoundrel Ralph C. Harrison. The *basis* of the whole structure is the false pretense (a pretense set up without any investigation or honest review of the case) that there was no foundation for the argument of the brief. Upon that false pretense as a *basis*, and for the purpose of diverting attention from its falsity, there is erected, by means of the deceits and trickeries in the use of language which have been already reviewed, the cunning structure of infamous falsehood that the brief *threatened* and *menaced* and *assaulted* the Court.

The same thing can all be seen and with equal distinctness in the part of the disbarment judgment written specially by Wm. H. Beatty, the Chief Justice.* There, too, that whole structure of infamous falsehood and trickery can be seen from bottom to top, and also the *motive* with which it was erected, namely, to shield the infamous scoundrel Ralph C. Harrison.

*See the Appendix, pp. 29-30 and pp. 32-34.

In considering the propriety of the plain, forcible and criminatory language of the brief, it should be borne in mind what the case was. It is stated at length on pages 16-59 and pages 79-106 above.

Who ever heard of honest men objecting to plain, forcible and criminatory language in exposing and characterizing fraud, treachery, corrupt and wicked practices and oppression practiced upon the defenceless and by those from whom care and protection of those defenceless persons was especially due? And who ever heard of such an objection in a case of so extreme wrong and outrage?

It is worthy of notice that the judgment of disbarment cites no precedent.

On the contrary, the right and the duty to use such language in such a case are plain and have often been declared.

In Blair's *Lectures on Rhetoric and Belles Lettres*, in the Lecture on "Eloquence of the Bar," it is said:

"A proper degree of warmth in pleading a cause is always of use. * * An advocate personates his client; he has taken upon himself the whole charge of his interests; he stands in his place. It is improper, therefore, and has a bad effect upon the cause, if he appears indifferent and unmoved, and few clients will be fond of trusting their interests in the hands of a cold speaker."

And a little further on, in the same Lecture, the advocate is advised to adopt the practice of "reserving his zeal and his indignation for cases where injustice and iniquity are flagrant."

Charles Sumner, in his well-known eulogy in the Senate, on the character of Thaddeus Stevens, said:

* * " he used not only argument and history, but all those other weapons by which a bad cause is exposed to scorn and contempt. * * Speech was with him at times a cat-o'-nine-tails, and woe to the victim on whom the terrible lash descended.

" Does any one doubt the justifiableness of such debate? Sarcasm, satire, and ridicule are not given in vain. They have an office to perform in the economies of life. They are faculties to be employed prudently in support of truth and justice. A good cause is helped, if its enemies are driven back; and it can not be doubted that the supporters of wrong and the procrastinators shrank often before the weapons he wielded. Soft words turn away wrath; but there is a time for strong words as for soft words. Did not the Savior seize the thongs with which to drive the money-changers from the Temple? Our money-changers long ago planted themselves within our Temple. Was it not right to lash them away?"

In this disbarment judgment the Supreme Court of California has been made to stand alone in upholding an infamous scoundrel, a traitor, a corrupter of courts, and in denouncing his exposure as a crime. Except here, no court, so far as the writer is aware, was ever so wicked as to make it criminal to use strong language in exposing and denouncing wickedness and oppression. In the trial of Warren Hastings in the House of Lords the *attorneys who represented the accused* made the objection, and Edmund Burke then answered them as follows:

" We are not acquainted with the urbanity and politeness of extortion and oppression, nor do we know anything of the sentimental delicacies of bribery and corruption. We speak the language

of truth, and we speak it in the plain, simple terms in which truth ought to be spoken."

* * * *

"We know that it is one of the signs of a corrupt and degenerate age, and one of the means of insuring its further corruption and degeneracy to give mild and lenient epithets to vices and to crime. The world is much influenced by names, and as terms are the representatives of sentiments, when persons who exercise any censorial magistracy seem in their language to compromise with crimes and criminals by expressing no horror of the one or detestation of the other, the world will naturally think that they act merely to acquit themselves in its sight in form, but in reality to evade their duty. Yes, my Lords, the world must think that such persons palter with their sacred trust and are tender to crimes, because they look forward to the future possession of the same power and purpose to abuse it in the same manner it has been abused by the criminal of whom they are so tender.

* * * *

"We could not use lenient epithets without compromising with crime. We, therefore, shall not relax in our pursuits nor in our language. No, my Lords, no, we shall not fail to feel indignation, wherever our moral nature has taught us to feel it, nor shall we hesitate to speak the language which is dictated by that indignation. Wherever men are oppressed where they ought to be protected, we call it tyranny, and we call the actor a tyrant. Wherever goods are taken by violence from the possessor, we call it robbery, and the person who takes it we call a robber: Money clandestinely taken from the proprietor, we call theft, and the person who takes it we call a thief. When a false paper is made out to obtain money, we call the act

a forgery. * * All these offenses, without the least softening, under all these names, we charge upon this man; and we are sorry that our language does not furnish terms of sufficient force and compass to mark the multitude, the magnitude and the atrocity of his crimes.

“How comes it, then, that the Commons of Great Britain should be calumniated for the course which they have taken? * * I answer, there are two very sufficient causes, corruption and ignorance. The first disposes people to a fellow feeling with the prisoner. When they cannot deny the facts they attack the accusers—they attack their conduct, they attack their persons, they attack their language in every possible manner. I have said, my Lords, that ignorance is the other cause of this calumny. Ignorance produces a confusion of ideas concerning the decorum of life, by confounding the rules of private society with those of public function. To talk, as we here talk, in a mixed company of men and women, would violate the law of such societies, because they meet for the sole purpose of social intercourse, and not for the exposure, the censure, the punishment of crime, to all which things private societies are altogether incompetent. In them crimes can never be regularly stated, proved or refuted. The law has therefore appointed special places for such inquiries, and if in any of those places we were to apply the emollient language of drawing rooms to the exposures of great crimes it would be as false and vicious in taste and in morals as to use the criminatory language of this hall in drawing and assembling rooms would be misplaced and ridiculous.

“If it should still be asked why we show sufficient acrimony to excite a suspicion of being in any manner influenced by malice or a desire of revenge, to this, my Lords, I answer, Because we

would be thought to know our duty, and to have all the world know how resolutely we are resolved to perform it. The Commons of Great Britain are not disposed to quarrel with the Divine Wisdom and Goodness, which has moulded up revenge into the frame and constitution of man. He that has made us what we are has made us at once resentful and reasonable. Instinct tells a man that he ought to revenge an injury; reason tells him that he ought not to be a judge in his own cause. From that moment revenge passes from the private to the public hand, but in being transferred it is far from being extinguished. My Lords, it is transferred as a sacred trust to be exercised for the injured, in measure and proportion, by persons who, feeling as he feels, are in a temper to reason better than he can reason. Revenge is taken out of the hands of the original injured proprietor, lest it should be carried beyond the bounds of moderation and justice. But, my Lords, it is in its transfer exposed to a danger of an opposite description. The delegate of vengeance may not feel the wrong sufficiently; he may be cold and languid in the performance of his sacred duty. It is for these reasons that good men are taught to tremble even at the first emotions of anger and resentment for their own particular wrongs; but they are likewise taught, if they are well taught, to give the loosest possible rein to their resentment and indignation whenever their parents, their friends, their country or their brethren of the common family of mankind are injured. Those who have not such feelings, under such circumstances, are base and degraded. These, my Lords, are the sentiments of the Commons of Great Britain.

* * * *

“Oh, but we ought to be tender towards his personal character—extremely cautious in our speech! We ought not to let our indignation

loose! My Lords, we do let our indignation loose; we cannot bear with patience this affliction of mankind. We will neither abate our energy, relax in our feelings, nor in the expressions which those feelings dictate. We feel for the works of God and man; we feel horror for the debasement of human nature, and feeling thus, we give a loose to our indignation and call upon your Lordships for justice."

* * * *

"The language I used was not, as fools have thought proper to call it, offensive and abusive; it is in a proper criminary tone justified by the facts that I have stated to you, and in every step we take it is justified more and more."

Now let the reader examine the judgment of disbarment by itself. Take the language of the brief even as it is there represented, even with the malicious and shameful garbling to which it is there subjected and which is there manifest. When you examine the language of the judgment of disbarment closely and critically, without prejudice and in an independent spirit, and keeping in mind the actual character of the case, which even there appears, despite the whitewash with which the authors of the disbarment have sought to cover their associate, is it not plain, even from the disbarment judgment itself, that the language of the brief for which the disbarment was inflicted was a strictly just and proper exposition of an important feature of the case.

The language of the brief was in every particular, in every respect, and from every point of view, just and proper throughout; and at the hearing of the citation, and when the disbarment judgment was made and ever

since, every Justice concerned in the disbarment well knew, as he still knows, that the language of the brief was both just and proper.

If the Justices (besides Harrison) had been honest men and free from the domination of The Southern Pacific Company, then clearly the brief, written as it was, would have been not only justly and properly but wisely written.

And, if the case was to be carried on, then, although every Justice of the Court was an infamously corrupt agent of The Southern Pacific Company, still the brief was not only justly and properly but wisely written, and for the following reasons:

In the defense of a widow and her daughters, I had pursued a scoundrel to his lair. The greater the strength of his lair the greater his power to do evil, not only to them but to others. The greater was therefore the duty to expose him fully. It was the plain duty of all the other Justices of the Court—as it ever since has been and still is the duty of every honest man—to uphold me in so exposing him.

To use a saying of Lord Bacon, the duties of life are more important than life. It is a first duty of every human being—and especially in such a country as the United States—to keep and maintain to the uttermost and against all odds the natural and fundamental rights of a human being. To have abated, in such a case, anything whatever of what was said in the brief, would have been a failure in that duty.

When the brief was filed, and ever since, the Supreme Court of California, though erected by the people as a temple of justice and maintained by the people for the great end of justice, was in fact, as it still is, a den

of thieves. Of this fact the proof is given in these pages.

And if the brief had been composed in mild, neutral language, if it had not been written substantially as it was, the common practice would have been followed; a false judgment, couched in cunning, crafty, tricky, dishonest language would have ended the case with a denial of justice.

To use a military term, the brief, written as it was, had the virtue of being an effective *reconnaissance in force*; it compelled the corrupt judges, enemies of mankind, to reveal themselves and their position plainly and unmistakably. To use the expression of Wendell Phillips, already quoted, it was like the spear of Ithuriel that, driven to the quick, made the Devil start up in his own likeness. All the Justices and their principals, The Southern Pacific Company, were, when the brief was filed, mutually engaged in the same corrupt practices. The brief was so written that the newspapers, in announcing it to the people, exhibited the Associate Justice, Ralph C. Harrison, in his real character. Upon looking into the case and the brief, The Southern Pacific Company and the Justices, their agents, saw that the case was so clear that a decision of it could not be so drawn up as to whitewash Associate Justice Ralph C. Harrison. Under such circumstances the brief, in laying the lash well and properly upon him, so hurt and surprised them all that it drove them for the time out of their usual self-control and shrewdness; and in their wicked frenzy they sought to save their confederate by striking down the advocate who had so well exposed him. In so doing they revealed themselves plainly and unmistakably in their actual character.

To have driven such a band of criminals to so complete a self-exposure has its value. If it shall be understood and followed up by the people it will have the greatest value. Notwithstanding the great suffering it has caused to me and mine, and perhaps is yet to cause, I am glad that the brief was so well written.

(9.) The Outrage of Assigning the Pretended Groundlessness of the Brief as a Ground For the Disbarment.

It is also stated in the judgment of disbarment as one of its grounds that the charge of fraud argued in the brief was untrue. This ground is not stated separately, but is cunningly interwoven with the other grounds, and was, with the other alleged grounds, taken from the editorials in *The Record-Union*. Reserving its particular consideration for another point, it is enough to mention here that—even if the argument of fraud had been unsound—it was nothing less than outrage to set up an alleged groundlessness of the argument as any just cause for disbarment. Does it not happen in every litigated case that one of the contending arguments is found to be unsound? Is a lawyer to be disbarred and ruined because the Court is not convinced by his argument? Is a physician to be put to death for not being infallible in his diagnosis of a case? Indeed, that the unsoundness of a lawyer's argument is no ground for his disbarment has been expressly decided by the Supreme Court of California. *

* *Fletcher vs. Daingerfield* 4, 20 Cal., 430.

(10.) The Ground That No Apology Was Offered.

In the judgment of disbarment it is said (in the part signed by five Justices):

* * "The respondent did not offer any apology or make any excuse; but, in his written answer and in his oral argument, he boldly contended that his brief was unobjectionable and contained nothing which he had not the right to put there."* * *

And in the part written specially by Wm. H. Beatty, the Chief Justice, it is said:

* *. "He claims of course, never to have understood, until his attention was called to it by a brother attorney during a recess of the Court taken just before the close of his argument, that he was charged with having menaced the Judges with any disagreeable consequences to themselves in case of an adverse decision. * * *

* * "For after devoting a part of two days to a vindication and renewal of his assault upon Justice Harrison he interrupted the course of his argument for a few moments to inform the Court that during the recess a brother attorney in whom he had confidence had informed him that to some minds the language of his brief might convey the idea of a threat. He, however, professed not to see it even after his attention had been so directed to the matter, but offered, if the Court differed with him, to cancel the offensive passages in the briefs on file, and in those he had distributed among his friends.

"In my opinion this retraction was wholly insufficient. Mr. Philbrook had not only been informed by a brother attorney of the offensive construction which might be put upon his brief; he had been notified at the opening of the proceedings by the argument of Mr. Hayne that such was the construction placed upon it by the Committee of the Bar Association, and he was plainly informed from the bench that it was understood in the same way by the Court. If in spite of these plain intimations, he was still unable to see what was so clearly apparent to others, it ought to have occurred to him that he would do well to take further advice of those in whom he had confidence as to the propriety of modifying his written answer,

* See the Appendix p. 22.

and of introducing into that permanent record a plain and unequivocal retraction or disavowal of the intention to threaten the Court. That he has never done so, nor offered to do so, leaves his offense entirely unmitigated in my eyes and imposes upon the Court the necessity of inflicting the due penalty."* * *

These passages breathe the same malevolent dishonesty, the same intentional and wicked falsehood as marks the whole decision. While there was nothing in the brief for which to apologize, yet, upon the mockery of a hearing that was allowed, the attorney, vainly struggling before his wicked persecutors, did tender all the apology that any but the most unprincipled rascals and cruel and wicked oppressors could have demanded. To show this, the following transcript from the notes of the short-hand reporter are here given :

"Mr. Philbrook. May it please the Court : At the end of the forenoon session I was kindly given a suggestion on which I wish to act. Mr. John A. Wright, a member of the bar, *for whom I have the greatest respect*, made a statement to me, that he had read this brief, and that from his standpoint, while to a logical mind the passage in the brief, which is quoted in full in the citation, might be susceptible of the construction that I gave it, he thought that to some minds it might convey the idea of a threat and might be deemed improper. I have looked it over very carefully. I cannot see it myself, but I desire to say that if in the mind of the Court that suggestion that he gave to me is correct, if I am wrong in it, or in any other part of this brief, I can only state that I am willing to have it struck out and out of all copies given to friends. I, of course, feel in my position here that I cannot ask that or set that up as any ground of defense to the citation. I have

* See the Appendix p. 32.

to go through with my case and submit it here as it is, and it may not be right, or it may be right to make that statement, but I do make it.

“The Chief Justice (Wm. H. Beatty): I will state to you, perhaps, Mr. Philbrook, that you certainly put a construction on the language of your brief entirely different from that which the Court puts upon it. We put the construction upon it, the same construction Mr. Hayne did in his remarks about it yesterday, that you tell this Court plainly and explicitly that we must decide this case in your favor, or else we shall be held to be corrupt.

“Mr. Philbrook: *Well, I can only state that no such thought ever entered my mind, and give the explanation of it that I have given*, and every paragraph in my judgment here sets out a different phase of view of that transaction that was proper to be argued, and also it was my judgment that if there is anything about the transaction (the brief) which plainly is objectionable, it should be considered from the inherent character of the transaction. Now, at the same time, I have tried very carefully—I do not know how else I can state that; I do not know how else I can get that before the Court—I feel bound in a court of justice to act upon my conviction of the truth, and that is as any man does, judge or otherwise, and to weigh the matter very carefully, and then act on my conviction of the truth. That is *my* conviction. I know, of course, that my standpoint may be different, and all that, and I will say that if the Court considers that I am wrong in this, I am frank to say that *I regret very much that anything in the brief should get in that would have that construction or be offensive in any way unnecessary to the case*; and if the Court should be so minded as to take that out, I am entirely willing to do so,

because I think the brief still gets the idea before the Court which I did wish, and still think, ought to be laid before the mind of the Court."

And not so much as an intimation that an apology should be made was ever given until *the judgment of disbarment itself*, i. e., not until it was impossible to comply with such a suggestion.

Besides, when Wm. H. Beatty, the Chief Justice, made the oral statement just quoted, I, struggling there alone as I was, against the unspeakable wickedness of infamous scoundrels, immediately replied in the words just shown.

It was after this that the judgment of disbarment was written up, with the passages (quoted above) about the refusal to make an apology.

But the bad faith and wickedness of the authors of the disbarment is further shown from what followed. The first intimation which I was given that I should have placed in the permanent record a plain and unequivocal retraction or disavowal of the intention to threaten the Court was in the judgment made against me. I, however, had still an opportunity of introducing into the "permanent record," everything which in the judgment of disbarment was said to have been desired, the opportunity being the petition for rehearing. I therefore immediately prepared and printed a petition for rehearing and filed it within the time provided by the rules of the Court, and as a part of that petition inserted a passage as follows :

■ "I now state further what I thought I expressed in my answer to the citation, namely, I never had the slightest intention to make, either directly or indirectly, either expressly or by implication

or intimation, any threat whatever to the Court or to any Justice thereof. I never had the slightest intention to convey in any manner any such idea as that the Court or any Justice thereof would act corruptly, or be known or supposed to act corruptly from having decided the case or any point in it against my client or against my argument or claim. No such intention and no such thought ever entered my mind. In framing my language I never had an idea or a suspicion that it would or could be construed or understood as disrespectful to the Court, or as embodying any threat or intimation of evil consequences to any Justice in any contingency whatever. And I still think that nothing of the kind can be found in the brief by any natural or fair construction or without widely misunderstanding the argument there sought to be made.

"In preparing and filing the brief referred to in the citation, my sole purpose, intention and endeavor was to show as clearly as possible to the Court and to the Justices who should take part in the decision the real character of the case and the application of the law to it. Many of the facts I knew of my own knowledge, all were established fully and without contradiction in the record. The case embodies what I thought and still think a most outrageous piece of treacherous trickery to defraud the aged widow and her daughters, my clients, of their estate. I had such confidence in the Court and in the Justices to whom the brief was addressed that I never even doubted that their main concern would be to do justice, to right the wrong."

The response to that petition was made in only two days and in only two words, which were :

" Rehearing Denied."

Is it not plain that the language of the judgment of disbarment as to the omission of the victim to make an apology was a false and hypocritical pretense? Taking the language of the judgment of disbarment throughout, is it not plain that what was really sought was to destroy my good name, and to compel me to accept a mangled and crippled right to follow my profession, an existence of living shame, as a bribe for repudiating the cause of my clients? What was, as it still is, sought, was, and still is, to compel me to submit to the "punishment," and, as a condition for having it withdrawn, to make a public false confession that the cause of my clients is without foundation. It is the use of the power of the State of California by The Southern Pacific Company, to compel an attorney to repudiate and betray his wronged, oppressed and defenseless clients, to their wicked enemies.

In Coke's Institutes, Part 2, On the 29th Chapter of Magna Charta, Sir Edward Coke says (at pp. 54-5):

"The philosophical poet doth notably describe the damnable and damned proceedings of the Judge of Hell." * *

He then quotes the well known lines of Virgil, and translates them thus:

"First he punisheth, and then he heareth, and lastly compelleth to confess, and make and mar laws at his pleasure." * *

And he then says:

"But good Judges and Justices abhor these courses."

But in the case here, the authors of the disbarment and of the decision of the case in which the brief was

filed, have far outdone all that was so emphatically condemned by Sir Edward Coke.

The position concerning an apology thus taken in the judgment of disbarment was also dictated in advance by The Southern Pacific Company; and the kind of apology wanted was also stated in advance by The Southern Pacific Company. See the news article in *The Evening Post* on December 7, 1894, and the editorials in the same paper on December the 13th and December the 20th (Appendix pp. 8, 9, 21). Those were articles published in San Francisco, and were specially addressed to me. The articles in *The Record-Union* were published in Sacramento and were meant for the people of the State. Hence it was only in the articles in *The Evening Post* that the exhortation was addressed to me "to withdraw his insolent and disrespectful brief," and "to apologize." The reader is asked to notice the peculiar language of those articles in *The Evening Post* concerning an apology. It is plainly the language of the owner of The Supreme Court of California, addressed to me. A similar article (mentioned in subdivision 12 of this chapter), published in a venal weekly of San Francisco on March 4, 1899, contained a similar demand, saying :

"Nothing but an abject apology, with a promise to be at least rational in future, will cause the tribunal of last resort to lift its sentence of disbarment."

(11.) The Bolstering of the Disbarment by Falsely Exhibiting the Victim as Admitting That He Was Being Treated Fairly.

A bolstering of the disbarment which was about to be inflicted by exhibiting the victim as admitting that

he was being treated fairly was invented and outlined in advance by The Southern Pacific Company and published in the editorial in *The Record-Union* on December the 20th (See the Appendix p. 17), where, with deliberate lying, I am represented as *admitting* and *saying* that I was being treated fairly.

In the part of the judgment of disbarment written by Wm. H. Beatty, the Chief Justice, this rascally contrivance of *The Record-Union* is also adopted. Taking rascally advantage of what was said by me as shown on pages 170-2 above, Wm. H. Beatty, the Chief Justice—by a piece of infamous trickery of which only the basest of scoundrels and vilest of cowards could be capable—strives to misrepresent me as admitting the disbarment to be just. This effort of Wm. H. Beatty, the Chief Justice, may be seen in all that part of his concurring opinion which, extending to the foot of page 32 of the Appendix, begins with the following words on page 31:

“Mr. Philbrook, himself, by his tardy disclaimer made in the course of his oral argument, seems to admit the justice of these views.”

(12.) The Bolstering of the Disbarment by the Trickery of Exhibiting it as Approved by “A Brother Attorney” of the Victim, “in Whom He Had Confidence.”

This is done by Wm. H. Beatty, the Chief Justice, in his concurring opinion, and is shown on page 32 of the Appendix. It is based in part upon a deliberate lie about my language: What I said was “A member of the bar for whom I have *the greatest respect* (See the transcript from the reporter’s notes shown on page 170

above). Wm. H. Beatty, the Chief Justice, by deliberately lying, turns my words into "a brother attorney *in whom he had confidence*" (See the Appendix p. 32). And here I may add that shortly after the disbarment was inflicted the official reporter informed me that Wm. H. Beatty, the Chief Justice, had my exact words written out in long hand from the reporter's notes and furnished him before he wrote his concurring opinion. He was searching for means by which to take me at a disadvantage, and, not finding it in my words, chose to invent it by lying. The trickery is also based in part upon *covert assumption*, a trick already described, the *covert assumption* that the language did constitute a "menace" and "threat." This bolstering of the disbarment with "a brother attorney *in whom he had confidence*" is a trick conceived and practiced in the same rascally, cowardly, malevolent spirit, and for the same evil purpose, as that of bringing in "A Committee from the Bar Association of San Francisco," pointed out on pages 113-117 above.

**(13.) The Bolstering of the Disbarment by the False Pretense
that the Victim "Was Plainly Informed from the Bench"
That He was Accused of Having "Menaced the Judges."**

In the effort to bolster the disbarment no effort was spared, no matter how contemptible. In addition to those already pointed out, it is stated in the part of the judgment of disbarment written specially by Wm. H. Beatty, the Chief Justice, that the victim "was plainly informed from the bench" that he was accused of having, in the brief, "menaced the judges." This false-

hood may be seen in that part of his concurring opinion shown on pages 31 and 32 of the Appendix, and in the passage quoted on page 169 above. It is expressed with the trickery in the use of language which characterizes the entire judgment of disbarment. In one part the language is "he was plainly informed from the bench," and a little further on what was said is called "these plain intimations" (see the Appendix, p. 32).

All this pretense in the judgment of disbarment is founded solely upon the verbal remark which was made by Wm. H. Beatty himself, the Chief Justice, at the close of the mock hearing of the citation. How false it is may be seen by comparing it with the very words he uttered, as they appear in the transcript from the notes of the shorthand reporter shown on page 171 above.

(14.) Two of the Particular New Accusations.

To show the outrage of any of the new accusations in the judgment of disbarment, it would of course be enough to show that it is a new accusation, inserted without any previous notice of it to the accused and without giving him a hearing upon it. But the two new accusations contained in the following passage are worthy of still further attention:

"In a petition for rehearing he used disrespectful language towards a Commissioner of the Court who had prepared the opinion in the case, for which, perhaps, he should have been called to account at the time; and more recently we were compelled to strike out his brief in another case for disrespectful language."*

* See the Appendix, p. 28.

This was forthwith (January 10, 1895) exploited in an editorial in *The Record-Union* as follows:

"He was punished for intolerable and repeated insolence, and for threats and attempted intimidation of the Courts, of which offending he has been notoriously guilty in the past, says the Court, and so say his fellow members of the bar in San Francisco."*

The sole basis for those accusations and for that ground of the disbarment is as follows:

As already stated, it was on April 27, 1894, that the case in which the brief was filed was argued in the lower Court on the motion for a new trial. At that time, in the presence of J. B. Reinstein and E. R. Taylor, who appeared as attorneys for the Newmans, I pointed out fully the fraud in which Ralph C. Harrison, who was then one of the Justices of the Supreme Court, was a party; and I also pointed out that the placing of the papers of the secret transfer in his handwriting and having them signed by him as the sole witness, was a plot to intimidate me into abandoning my clients and to influence the courts improperly to sustain the transaction. My argument and the fact that I was appealing the case to the Supreme Court, were of course reported to Justice Ralph C. Harrison, for E. R. Taylor was his particular crony, and J. B. Reinstein and the two Newmans were his confederates. Thereupon Ralph C. Harrison began to use the position he occupied as a Justice of the Supreme Court, to strike at me and to get me discredited with the public so as to prepare a shield to be interposed between himself and the exposure of his villainy, which, as he then knew, would shortly be made by me in the Supreme Court.

*See the Appendix, p. 36.

On June 13, 1894, one of my cases (*Dowling vs. Conniff*) in the Supreme Court was there decided against my client. The decision may be seen in Vol. 103 of the Cal. Reports at p. 75. The Commissioner who prepared the decision was the father-in-law of Wm. F. Herrin, the Chief Counsel of The Southern Pacific Company. Only ten days later the same Court decided another case (*Ryan vs. Altschul*) upon the same identical point of law and laying down as the law directly the contrary of what ten days previously had been declared as the law in *Dowling vs. Conniff*. The second of the two decisions may be seen in the same volume of reports at p. 174. My petition for a rehearing of *Dowling vs. Conniff* (a petition which was forthwith denied) only pointed out that the rule of law which had been expressly denied in the decision had been expressly affirmed ten days later. That was the falsely pretended "disrespectful language." That it was simply the true statement of a fact any one may see by comparing the two decisions. The passage in the judgment of disbarment, just quoted, is the first and only statement or even intimation that was ever made to me that my petition for rehearing contained "disrespectful language."

On June 15, 1894, in a case (*Warner vs. Dye Works*) pending in the department of the Supreme Court presided over by the Justice Ralph C. Harrison,—a case in which the same Reinstein & Eisner were the opposing attorneys, and in which a piece of their grossly dishonest practices was fully proved and was one of the points in the case—an order, so drawn as not to reveal what particular Justice was its author, was made strik-

ing out my briefs. That order was in the following words:

"By the Court: The briefs filed herein on the part of the appellant contain reflections upon the integrity and conduct of the Superior Court in which the case was tried as well as of the counsel of the respondents, and indicate such a manifest disregard of the respect due from an attorney to the judicial tribunals of the State that it is not proper that they should be permitted to remain unnoticed or without rebuke. It is therefore ordered that the said briefs be struck from the files of the Court."

Upon that order as a basis, every morning newspaper of San Francisco was made to publish on the next day an article calling me by name, representing me as "brought up with a short turn by the Supreme Court," and abusing me most venomously. One of those articles occupied nearly a column of one of the great daily newspapers of San Francisco, and was preceded by six separate sets of sensational and abusive head lines. That order and those newspaper articles were all the work of Justice Ralph C. Harrison and his confederates, an effort to get me discredited with the public and thus to ward off the effect of the exposure of his fraud and treachery and wickedness which I was soon to make in the Supreme Court.

Such and such only was the basis for the pretended ground of the disbarment stated in the passage last quoted, as formulated in the judgment of disbarment and editorially exploited by The Southern Pacific Company in *The Record-Union*.

(15.) **The Falsity of One of the Assigned Grounds Subsequently Confessed.**

One of the new accusations in the judgment of disbarment is that "It [the brief] also contains language

highly reprehensible concerning the learned Judge of the Superior Court who heard and determined the said action at *nisi prius*." The falsity of this pretended ground of the disbarment has been subsequently confessed. For all that part of the brief, *without even the least diminution or modification in the language*, was refiled by Mr. Rankin, the special administrator, and was received and acted on by the Justices and has been kept on the files without so much as the least censure or even criticism.

(16.) **The Assignment of the Defense Made by the Attorney, as One of the Grounds of the Disbarment.**

The following grounds of the disbarment judgment—all of them new accusations—add punishment for defending against its imposition, namely:

"It [the brief] also contains language highly reprehensible * * * and his answer contains such language concerning another learned Judge of the Superior Court who decided the other cases mentioned in said Philbrook's answer."*

"As respondent has, in the same connection, assailed not only all the members of this Court and the two Superior Judges above referred to, but also certain reputable lawyers who were at one time associated with him in the litigation and a special administrator who was appointed at his own instance and out of his own office," etc., etc.†

It is a denial of due process of law, of an inalienable human right, to make a party's course in defending himself against a prosecution, a ground for adding to the severity of the judgment. It is also settled that an

* See the Appendix, p. 23.

† See the Appendix, p. 26.

attorney can not be disbarred for anything he may do as a party to a suit or proceeding in the Court.*

In *Greene vs. Briggs*, 1 Curtis C. C., an act of the Legislature had provided that if any one convicted of selling intoxicating liquor should appeal from the conviction, and should be convicted again upon the trial to be had upon such appeal, he should be more severely sentenced. The Court held that it was not within the power of the Legislature to make any such conduct a ground for adding to the severity of the sentence.

In the case *In re Garland*, 4 Wall., 384, it is laid down by the Supreme Court of the United States (and it is of course self-evidently true) that the right to defend one's self against a prosecution, is an inalienable human right.

In the case *In re Wallace*, L. R. 1 P. C., a court had disbarred an attorney for alleged contemptuous conduct on his part as a party to a suit. On appeal, the disbarment was set aside, on the ground that his conduct as a party to a suit, could not possibly furnish ground for disbarment.

(17) The Effort to Bolster the Disbarment by Appealing to the Prejudice Against Lawyers. The Trickery of Pretending to be on the Side of the People.

It is well known that among the ignorant, among those who have never felt the need of a lawyer by direct personal experience, there is a prejudice against lawyers based upon the notion that they are given to insulting witnesses and parties and to taking unfair

**Greene vs. Briggs*, 1 Curtis C. C., 327. *In re Garland*, 4 Wall, 384. *In re Wallace*, L. R. 1 P. C., 283.

advantages, and upon the misconduct of dishonest members of the profession. The editorials in *The Record Union* appealed to this prejudice cunningly and profusely in support of the disbarment, and were in this respect followed by the same trickery in the judgment of disbarment.

An example of this may be seen in the following passage in the concurring opinion of Wm. H. Beatty, the Chief Justice:

“The law which in such cases makes us the judges of offenses against the Court places us in an extremely delicate and invidious position, but it leaves us no alternative except to allow the Court and the people of the State, in whose name and by whose authority it acts, to be insulted with impunity, or to exercise the authority conferred by law for the purpose of compelling attorneys to ‘maintain the respect due to courts of justice and judicial officers.’ ” *

In the part of the disbarment judgment signed by five Justices, the same trickery is employed, but is more cunningly masked. The following passage is an example:

* * “It is intolerable. It can not be suffered by any occupant of the bench who has a just sense of his duty to the people to preserve the due dignity of their courts and the free course of justice.” †

These passages are, however, but examples of a like trickery which may be seen, though cunningly masked, throughout the judgment of disbarment.

This also is a peculiar trickery which, both the idea, and the phraseology, was copied into the judgment of disbarment from the articles previously published by The Southern Pacific Company in *The Evening Post* and *The Record-Union*. See the editorial published in

* See the Appendix, pp. 30-31.

† See the Appendix, p. 27.

The Evening Post on Dec. the 12th (Appendix p. 9). the editorial in *The Record-Union* on December the 13th (Appendix pp. 10, 13, 14, 15); and the editorial in *The Record-Union* on December the 20th (Appendix pp. 18, 21). The same idea and the same phraseology also appear in the editorials published in *The Record-Union* on January the 10th (Appendix p. 36), on January the 14th (Appendix pp. 39, 40), on February the 18th (Appendix p. 42), on March the 2nd (Appendix p. 43), on March the 14th (Appendix p. 46), and on March the 23rd (Appendix p. 49).

(18.) **The Language of the Brief Garbled and Falsely Quoted.**

This is extensively practiced in the part of the disbarment judgment signed by five Justices, and the dishonesty and malevolence with which it is done is apparent. And a like garbling of the language of the brief was also published in advance as a part of the editorial in *The Record-Union* on December 13, 1894.*

The language of the brief is not given consecutively, but in broken and separated fragments, and any statement of the point which was being discussed in that part of the brief is carefully avoided. The treatment given the brief falls strictly within the definition of garbling, *i. e.*, changing a document or writing, with evil intent, by suppression or elision. And, in connection with it, there is, by the device of falsely quoting in italics words not actually in italics in the brief, a straining of the language away from its true meaning, a malevolent effort to put into the language insinuations not actually

*See the Appendix, pp. 11-13.

there. In this manner the judgment of disbarment falsely quotes in italics the following expressions, not so much as a word of which was actually in italics in the brief: "*unless you adopt it as your own*"; "*unless you accept it*"; "*all to whom knowledge*"; "*suspect*"; "*the decision here*"; "*they will know it.*"

(19.) **The Great and Faithful Labor Manifest in the Brief.**

In considering the causelessness of the disbarment, the character of the brief, described on pages 75-86 above, was of course in itself an important fact. In the judgment of disbarment, all consideration of so important a fact is wickedly suppressed.

The principle here referred to has been noticed by Prof. Ritchie in his treatise on *Natural Rights*, in speaking of the test to be applied in determining whether a book is meritorious. In this connection, Prof. Ritchie says (at p. 193):

"The test of earnest, hard work may be suggested as a help towards distinguishing the serious artist from the manufacturer of mere indecencies; it is one form of the general ethical test of coherence. The virtue of industry, of honest work, may go along with many defects, but can not go along with *mere* recklessness and absence of all sense of responsibility."

(20) **The "Necessity" of the Disbarment.**

In the judgment of disbarment, it is said:

"We exceedingly regret the necessity of this proceeding.
* * * But to have overlooked it would have been to

violate our duty, invite future disrespect, and establish a precedent which would have embarrassed the Court if offenses of a similar character should be called to its attention in the future. * * And even now we regret that we can not see some escape from the necessity of imposing the penalty which seems to be imperatively demanded.”*

In the particular part of the disbarment judgment drawn up specially by William H. Beatty, the Chief Justice, it is said :

* * “That he has never done so, nor offered to do so, leaves his offense entirely unmitigated in my eyes, and imposes upon the Court the necessity of inflicting the due penalty. As to the character of the penalty, I concur in the view of the Court that it should be suspension of his privileges as an attorney.”†

This pretended and false ground for the disbarment was also published in advance by The Southern Pacific Company in their newspapers. See the articles in the Appendix.

In *Bagg's Case*, 11 Coke 93 (decided in 1616), where the removal of the burgess was held void and a mandamus issued to restore him, a like plea was profusely set up professing to justify the removal on the ground of “necessity.”

In the *Case of Wallace* L. R. 1 P. C. 283 (1886), where the disbarment of an attorney for contempt was held to have been inflicted without cause and overruled, the Court which had inflicted the disbarment made profusely the same plea of “necessity.”

In *Ex Parte Steinman* 95 Pa. St. 220, where the disbarment of two attorneys for libelling the Court was held void and overruled, the Court which made the disbarment made profusely the same plea of “necessity.”

*See the Appendix, p. 28.

†See the Appendix, p. 32.

So universally has "necessity" been set up in all periods of human history as the plea of oppression and tyranny, that it long ago passed into a proverb.

In his speech on the India Bill, William Pitt said:

"Necessity is the argument of tyrants; it is the creed of slaves."

Charles Sumner, in a great speech, said:

* * "To say that it was a necessity is only to repeat the perpetual plea by which slave masters and slave-traders from the earliest moment have sought to vindicate their crimes."

And in *Paradise Lost* it is said:

"So spake the Fiend, and with necessity,
The tyrant's plea, excused his devilish deeds."

Possibly the authors of the disbarment would consider these passages from Milton, from Pitt, and from Sumner as "outrageous verbal assaults."

The Legal Effect of the Causelessness of the Disbarment.

The utter causelessness of the disbarment is in law, as in natural justice, a wrong even more fundamental than the denial of a hearing.

In *Violett vs. Alexandria* (92 Va. 514) the Court said:

"The object of the Constitution, in requiring notice and the opportunity to be heard, is that a man may be able to protect himself."

In *Hovey vs. Elliott* (167 U. S. 415) the Supreme Court of the United States said:

* * * "But notice is only for the purpose of affording the party an opportunity of being heard upon the claim or the charges made; it is a summons to him to appear and speak, if he has anything to say, why the judgment should not be rendered. A denial to the party of the benefit of a notice would be in effect to deny that he is entitled to notice at all, and the sham and deceptive proceeding had better be omitted altogether. It would be like saying to a party, appear and you shall be heard, and when he has appeared, saying, your appearance shall not be recognized, and you shall not be heard. * * * It is difficult to speak of a decree thus rendered, with moderation; it was in fact a mere arbitrary edict, clothed in the form of a judicial sentence."

In *Chicago, etc., R. R. Co. vs. Chicago* (166 U. S. 234) the Court said:

"Its [a State's] judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that [the 14th] amendment. In determining what is due process of law regard must be had to substance, not to form."

And in *Allgeyer vs. Louisiana* 165 U. S. 589, the Supreme Court of the United States has shown, in a truly admirable decision, that the 14th amendment of the Constitution of the United States is, among other things, a guaranty of the whole American people that no State shall punish any one for an act which is in its nature right and proper, or make any such act punishable. That the guaranty includes the individual lawyer's right to the proper use of his profession may

be seen from such decisions as *Ex parte Bradley*, 7 Wall. 364; *Ex parte Garland* 4 Wall. 333; and *Dent. vs. West Virginia* 129 U. S. 121.

10. The Disbarment Unlawful Because Imposed Upon the Ground of "Punishment" and "Penalty" for an "Offense."

The judgment of disbarment—following in this respect, as well as in others, the editorials published in *The Evening Post* and *The Record-Union*—expressly states, in its own words, that it is imposed upon the ground of "punishment" and "penalty" for an "offense." Take, for example, the following passages (see the Appendix pp. 27, 28):

* * "An attempt to influence a Judge through fear of physical injury is no graver offense than such an attempt against his reputation."

* * "And when the punishment of such an offense is clearly within the jurisdiction of the Court, as in the case of one of its own officers, it must impose the penalty or neglect its imperative duty."

* * "It may not be out of place to say that we have been lenient to respondent for past offenses of a character similar to the one now before us, though not so flagrant."

* * "And even now we regret that we cannot see some escape from the necessity of imposing the penalty which seems to be imperatively demanded."

And in the part written specially by Wm. H. Beatty, the Chief Justice, it is said (see the Appendix pp. 30, 31):

* * "In this consists the offense, of which the court was compelled to take cognizance of its own motion," etc.

* * "That he has never done so, nor offered to do so, leaves his offense entirely unmitigated in my eyes, and imposes upon the Court the necessity of inflicting the due penalty. As to the character of the penalty, I concur in the view of the Court that it should be suspension of his privileges as an attorney."

* * "The law which in such cases makes us the judges of offenses against the Court." * *

* * "all men would concede the propriety of depriving him of his privileges as an attorney, and if this is so it can not be denied that some penalty is incurred." * *

These passages are, however, but examples of the spirit and tone of the entire judgment of disbarment. The language throughout is vindictive in the extreme and full of hostility and malevolence and hate. It is manifest in substance, as well as being expressly avowed, that the disbarment was inflicted solely as a "punishment," a "penalty" for an "offense," and for the actual and openly avowed purpose of wreaking vindictive vengeance upon the victim and to cause him injury and suffering. It is manifest and undeniable that the case was not even considered in any other aspect. In the part written specially by Wm. H. Beatty, the Chief Justice, that is declared to be "*the view of the Court*," and in that view, he says expressly, "*I concur*," (see the Appendix p. 32).

And now consider the terms, "punishment," "penalty," "offense," which are so freely used in the judgment of disbarment.

In the constitution and statutes of California, the term "offense" is expressly declared to mean "crime," and "punishment" is expressly declared to be the purpose sought by a criminal action.*

* Constitution of 1849, Art. 1, Sec. 8. Constitution of 1879, Art. 1, Secs. 8, 13. Penal Code, Secs. 13, 15, 16; Part I: Title III (Heading), Title VII (Heading), Title XV, Chapter II (Heading).

In *State vs. West* 42 Minn., the Court said (at p. 152):

"The terms 'crime', 'offense' and 'criminal offense' are all synonymous, are ordinarily used interchangeably, and include any breach of law established for the protection of the public, as distinguished from an infringement of mere private rights, for which a penalty is imposed or punishment inflicted in any judicial proceeding. * * * the term includes any punishable violation of law, the doing of that which a penal law forbids, or omitting to do what it commands."

In *U. S. vs. Reisinger* (128 U. S., 402) the Supreme Court of the United States said :

"The only ground upon which the correctness of this interpretation may be doubted is, that the words 'penalty', 'liability', and 'forfeiture' do not apply to crimes, and the punishments therefor. We cannot assent to this. These words have been used by the great masters of crown law and the elementary writers as synonymous with the word 'punishment' in connection with crimes of the highest grade." * * *

In Webster's International Dictionary, the word "punishment" is defined as follows :

"(Law) A penalty inflicted by a court of justice on a convicted offender as a just retribution and incidentally for the purposes of reformation and prevention."

In the *Am. & Eng. Encyclo. of Law*, the word "penalty" is defined as follows :

"The term penalty involves the idea of punishment. A penalty is in the nature of a punishment for the non-performance of an act, or for the

performance of an unlawful act. It may be defined as the punishment which the law inflicts for its violation."

But it has been for more than a hundred years thoroughly settled as the law (and it is the manifest dictate of reason also) that an attorney can not be disbarred on the ground of "punishment" or for any such purpose.

In *Cohen vs. Wright* (22 Cal. 320) the Supreme Court of California said :

"And this is done not as a punishment of the attorney, but as a measure necessary for the protection of the public."

In *Ex parte Brounsall* (Cowper 829, decided in 1778) Lord Mansfield said :

"But the question is, whether, after the conduct of this man, it is proper that he should continue a member of a profession which should stand free from all suspicion. * * It is not by way of punishment, but the Court in such cases exercise their discretion, whether a man they have formerly admitted is a proper person to be continued on the roll or not."

In *Ex parte Wall*, 107 U. S., the United States Supreme Court quoted with approval this language of Lord Mansfield and said (at p. 288):

"The proceeding is not for the purpose of punishment, but for the purpose of preserving the courts of justice from the official ministration of persons unfit to practice in them."

In the *Case of Austin* 5 Rawle 203 (decided in 1835), where the disbarment of eight attorneys by a lower court was set aside, the Supreme Court, by Chief Justice Gibson, said :

“ But the end to be attained by removal is not punishment, but protection. As punishment it would be unreasonably severe ; * * for expulsion from the bar blasts all prospects of prosperity to come, and mars the fruit expected from the training of a lifetime. For this reason, the statute to regulate attachment and summary punishment for contempt, seems to be inapplicable to this class of cases. * * It is one thing to remove from office for unfitness, and another to punish for contempt.”

In *Scott vs. The State* 86 Tex. 321 (decided in 1894) all the decisions are reviewed and harmonized. It is there shown that whenever the disbarment of an attorney has been spoken of as “ punishment,” it has been so described solely to call attention to *the effect upon the attorney*, and as a reason why an attorney should never be disbarred except for ample cause clearly established.

Now, how did it happen that in the case here, the law and justice is so utterly reversed, that the disbarment has been inflicted, not only without so much as a shadow of just cause, but avowedly, as well as actually, as “ punishment,” “ penalty ” for an “ offense ”—*i. e.*, as a *punishment* for a *crime*. The answer is here. This was all demanded by The Southern Pacific Company, and their demand was complied with strictly.

That the disbarment was to be inflicted as a “ punishment ” for an “ offense ” was published by The Southern Pacific Company on Dec. 13, 1894, four days before the mock hearing of the citation, in an editorial in *The Record-Union* (see the Appendix pp. 10, 14, 15). And this fact was also published by them on Dec. the 20th—sixteen days before the disbarment judgment was filed, in an editorial in *The Record-*

Union, and also in another editorial in *The Evening Post* (Id. pp. 19, 20, 21). And, after the disbarment was inflicted, the fact that it had been inflicted upon that very false and vindictive ground was exulted in by The Southern Pacific Company, in articles published by them in *The Record-Union*. See the article published in *The Record-Union* on Jan. 8, 1895 (Appendix p. 34), that published on Jan. the 10th (Id. p. 36), that published on Jan. the 14th (Id. p. 40), that published on March the 2nd (Id. p. 43), and that published on March the 14th (Id. p. 46).

And, in demanding the disbarment as a "punishment for an "offense," and in announcing in advance that it was to be inflicted upon that false and vindictive ground, The Southern Pacific Company meant everything embraced within the meaning of those terms as they are defined in the authorities above quoted;—they meant, and so declared, that the disbarment was to be inflicted for the purpose of wreaking a vindictive vengeance upon the victim, and to cause him humiliation and disgrace and injury and suffering. This may be seen from the expressions used, of which the following language in the editorial of *The Record-Union* of Dec. the 13th is an example (see the Appendix p. 10):

"Disbarment will be mild punishment for such an offense. Under the circumstances it is difficult to see how the Court can do otherwise than strip the robes of 'Counselor' from the unworthy shoulders of its officer. It ought, beside, to jug him in the common jail, and let him learn wisdom while he cools his heels in prison."

And it is that identical *meaning* that is adopted and embodied, with fullness and precision, in the judgment of disbarment.

12. The Disbarment Unlawful In Being Imposed as Punishment for Contempt of Court.

Throughout the judgment of disbarment, both in the part signed by five Justices and in that written specially by Wm. H. Beatty, the Chief Justice—and following in this respect, as well as in others, the editorials published in *The Record-Union*—there are many expressions that tend to indicate that the disbarment was inflicted as punishment specifically for contempt of court, as well as “punishment” for an “offense” in general. The expressions here referred to may be seen on pages 23, 26, 27, 28 and 30–31 of the Appendix. Those expressions are not stated distinctly or separately, but jumbled up with others—a feature characteristic of the entire judgment of disbarment, and in which it also corresponds strictly with the editorials in *The Record-Union*. To use the words of Prof. Minto, quoted on page 149 above, “a mixed host of considerations are tumbled out before us.” There is in the editorials of *The Record-Union* and in the judgment of disbarment precisely the same vagueness as to what is the “offense” charged. Both in the editorials and in the judgment there are indications that the offense charged is a libel upon “Hon. Ralph C. Harrison,” also “an assault upon the liberties of the people” (see the Appendix p. 10), “the grossest of assaults upon liberty” (Id. p. 46), a sort of lese-majesty, and contempt of court.

We may therefore examine it specifically as a punishment for contempt of court. It would of course be enough that, as just shown, a lawyer cannot be lawfully or justly disbarred for any such purpose as punish-

ment. We now consider, however, specifically the punishment for contempt of court.

Ever since California became a State, it has been its settled law that disbarment can not be inflicted upon an attorney as a punishment for contempt of court.

And such also has always been the settled law in the Courts of the United States.*

And such was also the common law of England.

And such also is the law everywhere.†

In *Bagg's Case* 11 Coke 93 (decided in 1616 by Sir Edward Coke) where a mandamus was issued to restore a burgess of Plymouth, wrongfully removed, the Court, in stating the grounds of the decision, said :

* * "but words of contempt, or *contra bonos mores*, although they be against the Chief Officer, or his Brethren, are good cause to punish him, as to commit him until he has found good sureties of his good behavior, but not to disfranchise him."

In *Rex vs. Chancellor* 1 Strange 565 (decided in 1718), where a mandamus was issued to restore *Dr. Bentley* to his degrees in the University of Cambridge, the Court, in giving judgment said :

"But surely for a contempt they can not deprive. We punish our officers, but we do not turn them out."

And in *Ex parte Brounsall*, Cowper, 829, it was ruled by Lord Mansfield in 1778, that an attorney is not to be disbarred upon any such ground as "punishment."

In California the point was expressly decided in

**Ex parte Robinson* 19 Wall, 505 ; *Ex parte Wall* 107 U. S., 285.

†*Case of Austin*, 5 Rawle 205, quoted on p. 194 above.

1850 in the case of Stephen J. Field's disbarment (*People ex rel. Field vs. Turner* 1 Cal. 149). The disbarment of Field by the District Court at Marysville, for a gross contempt of the Court, was held by the Supreme Court unlawful, and a mandamus issued to restore him. The Supreme Court said (1 Cal. 149):

"First: Was the order properly made, and a valid determination of the Court, which ought not to be disturbed? It does not appear that it was made as a punishment for contempt, and if it were intended as such it could not be supported. The 13th section of the act organizing the district courts prescribes fine and imprisonment as a punishment for contempt, and this express provision must be taken as exclusive of all other modes of punishment. Viewed as an adjudication for a contempt, the order is invalid, for inflicting a punishment different from that warranted by the statute, the same as it would have been, had it imposed a heavier fine or sentenced to a longer imprisonment than the statute authorizes."

The law as thus laid down by the Supreme Court of California in 1850 has subsequently been expressly established by a statute, which expressly provides that the extreme penalty for contempt of Court shall be a fine not to exceed \$500 or imprisonment not to exceed five days, or both such fine and imprisonment, and that no other penalty shall be inflicted. And this provision of the statute has been by an express provision of the constitution affirmed and declared to be binding on all the courts.*

But the fact that the disbarment was to be inflicted as "punishment" for (among other things)

* C. C. P. §§ 18, 1209, 1218; Constitution Art. XXII, Secs. 1, 11.

contempt of court was published in advance by The Southern Pacific Company (see the editorial published in *The Record-Union* on Dec. the 13th (Appendix pp. 10, 15), and that published in the same paper on Dec. the 20th (Id. p. 20). And after the disbarment was inflicted it was exulted in and bragged about upon this same ground in articles published in *The Record-Union*. See the article published on Jan. 8, 1895, (Appendix p. 34), that on Jan. the 14th (Id. p. 36), that on March the 2d (Id. p. 43), that on March the 4th (Id. p. 44), that on March the 9th (Id. p. 45), and that on March the 14th (Id. p. 46).

13. The Disbarment Unlawful Because of Being a Cruel and Unusual Punishment.

To disbar an attorney for punishment is to inflict upon him cruel and unusual punishment. The infliction of such punishment is not only a violation of natural justice, but is also expressly forbidden by the Constitution of California. It is also expressly forbidden by the Constitution of the United States and by the Constitution of every State in the Union. In England the 14th Chapter of Magna Charta contained an express guaranty against such punishments, and this guaranty was repeated with greater emphasis in 1688 in the bill of rights. It is from that bill of rights that the same guaranty in the various American Constitutions has been taken.

In the Constitution of California the provision is as follows (Art. 1, Sec. 6):

“Excessive bail shall not be required, nor excessive fines imposed ; nor shall cruel or unusual punishments be inflicted.”

Justice Story, in his treatise on the United States Constitution, after quoting the provision, says (§ 1903):

“ This is an exact transcript of a clause in the bill of rights framed at the revolution of 1688. The provision would seem to be wholly unnecessary in a free government since it is scarcely possible that any department of such a government should authorize or justify such atrocious conduct. It was, however, adopted as an admonition to all departments of the national government, to warn them against such violent proceedings as had taken place in England in the arbitrary reigns of the Stuarts. In those times a demand of excessive bail was often made against persons who were odious to the Court and its favorites ; and on failing to procure it, they were committed to prison. Enormous fines and amercements were also sometimes imposed, and cruel and vindictive punishments inflicted.”

In *Robinson vs. Miner* 69 Mich. 549 (decided in 1888) a statute regulating the sale of intoxicating liquors was held to violate this constitutional guaranty, because in case of a second conviction, it provided that the person convicted, in addition to other punishment, should for five years be debarred from selling liquors at all, and for any conviction should for one year be debarred from becoming a surety upon any bond required by the act. The Court, after quoting the provision of the Constitution last above cited, said :

* * “ A druggist cut off for five years from his business may suffer a loss of immense sums, and so may any large manufacturer or large dealer

in having his store shut up and his business barred. It not only must usually bring about bankruptcy, but it also includes what is meant to be an infamous disability—to receive credit as a surety.

“The Great Charter made it unlawful to impose any penalty or forfeiture which should deprive a man of what is translated his ‘contentment’; or a person in any kind of business, whether commercial or otherwise, of the means of continuing that business. Selden speaks on this subject with some force in censuring the fines imposed in his time, which, he says, were in violation of this provision, and which led, among other things, to the bills of rights. *Seld.*, Tab. Talk ‘Fine.’ He says that the meaning of the Great Charter was to allow no man to be deprived of his ability to live according to his usual estate or ‘countenance.’ The great fines imposed during the times of the Stuarts, especially by the Star Chamber, were among the worst abuses of that period of tyranny. But very few, if any, instances can be found where men were made to forfeit their whole business receipts, and none certainly where they were made incapable of doing their ordinary business. The forfeiture of indefinite interests or sums only occurred in felonies when the penalty was death as well as forfeiture. It was in felonies, too, that disgrace and incapacity for any of the rights of citizen were imposed as penalties. These punishments have always been regarded as incompatible with our institutions, and there can be no doubt that the cruel and unusual punishment forbidden by the United States Constitution had special reference to the barbarities of the old law of felony. It is equally clear that any fine or penalty is excessive which seriously impairs the capacity of gaining a business livelihood. The penalties in this act, which are imperative and not discretionary, must necessarily break up business, and are not measured

by any standard of proportion or amount. The only measure of restraint is the value of the business broken up, and this may reach tens or hundreds of thousands of dollars.

“It is safe to say that throughout the United States any fine or forfeiture is unusual which has not some limitation of value, and any punishment is unusual which forfeits any civil rights.”

In the *Case of the Monopolies*, 11 Coke 84 (decided in 1602), where the grant of a monopoly in the manufacture of playing cards was held void, the Court said:

“And the common law, in this point, agrees with the equity of the law of God, as appears in Deut. XXIV:6, ‘No man shall take the nether or the upper millstone to pledge: for he taketh a man’s life to pledge.’ A man’s trade maintains his life, and therefore he ought not to be deprived or dispossessed of it any more than of his life.”

The decision in the *Case of Austin*, 5 Rawle 203, is shown on page 194 above.

In *Ex parte Wall*, 107 U. S. 317, Justice Field said:

“The attorney is admitted to the bar only after years of study. The profession may be to him the source of great emolument. If possessed of fair learning and ability, he may reasonably be expected to receive from his practice an income of several thousand dollars a year—equal to that derived from a capital of one or more hundred thousand dollars. To disbar him having such a practice is equivalent to depriving him of his capital. It would often entail poverty upon himself, and destitution upon his family.”

An illustration of the extent of such a “punishment” may be seen from an incident that took place in

San Francisco on June 30, 1898, and which is mentioned in *The Examiner* of July 2, 1898. It was the recording of deeds showing the payment of one million dollars to five attorneys of San Francisco for their services in but a single case, that of the estate of James G. Fair, and the services for which such payment was made occupied but a very short time, and were begun and ended within a very few months.

No small part of the suffering included in such a punishment is that of being rendered utterly incapable of assisting one's family or friends or fellow men—the daily and nightly torture of witnessing appeals for such assistance and being powerless to help.

Lord Roseberry, in an address delivered in May, 1899, said truly :

“ When I analyze it, the one great advantage of wealth is this: That when those we love are sick and weak, or aged, you can call in to their assistance the best medical advice and you can make a change of climate. For their benefit you can prolong life, as compared with the life of the poor, not merely in length of years, but in the comfort of existence. That I believe to be the sole great advantage the rich have over the poor.”

Such a punishment is the punishment of death itself, a death preceded by years of torture.

Sir Walter Scott narrates an interview in which Ramorny was advising the Duke of Rothsay to have his uncle murdered. When the Duke said sternly, “ You would not venture to dip your hands in royal blood ? ” Ramorny replied :

“ Fie, my Lord—at no rate—blood need not be

shed; life may, nay, will be extinguished of itself. For want of trimming it with fresh oil, or screening it from a breath of wind, the quivering light will die in the socket. To suffer a man to die is not to kill him."

To which the Duke answered :

"True—I had forgot that policy. Well, then, suppose my uncle Albany does not continue to live—I think that must be the phrase"—

Among the tortures of such a punishment there are those which are essentially the same as in a death from famine. The following passage in the speech of Prentiss, asking relief for the sufferers from the great famine in Ireland, describes such tortures :

"In battle, in the fullness of his pride and strength, little recks the soldier whether the hissing bullet sings his requiem or the cords of life are severed by the sharp steel. But he who dies of hunger wrestles alone, day after day, with his grim, unrelenting enemy. He has no friend to cheer him in the terrible conflict, for if he had friends how could he die of hunger? He has not the hot blood of the soldier to maintain him, for his foe, vampire-like, has exhausted his veins. Famine comes not up like a brave enemy, storming by a sudden onset the fortress that resists. Famine besieges. He draws his lines around the doomed garrison; he cuts off all supplies; he never summons to surrender, he gives no quarter. Alas for poor human nature! How can it sustain the fearful warfare? * * At last the mind, which at first bravely nerved itself for the contest, gives way under the mysterious influences that govern its union with the body. Then he begins to doubt the existence of an overruling Providence, he hates his fellow men and glares

upon them * * and, it may be, dies blaspheming."

But in such a punishment there are other tortures no less hard to endure—tortures that come from the ever present sense of being wickedly wronged and oppressed by cowardly wretches in the guise of men, in the name of the State, and by using to such an end the power of the people, and under color of the justice of the State. As said by Sir Edward Coke (2 Inst. 48): "And it is the worst oppression that is done by color of justice."

Let any one who, at great expense and by years of hard and unremitting toil and study, has made for himself an honorable business or profession, who has a refined and delicate wife to support and care for, and children to rear and educate, and whose entire means is his income from that profession or business; let any such man ask himself whether he would be content to have his whole business or profession taken from him, and to be thrown into the degraded position of a disbarred lawyer, to be disgraced and utterly ruined, and all upon the ground of a "punishment" upon him for having produced such a treatise, for attempting to show to a Court of Justice, on behalf of a widow and her daughters, such a case as is stated in outline on pages 16 to 59 above—to have all this done to him in a decision reeking with the extreme of bad faith and basest lies, corrupting the Court, violating the very first principles of justice, violating clear provisions of the Constitution, and the law which ought to be a sure defense to even the meanest human being, and by men acting at the same time as his accusers, and as judges and jury in their own case and executioners of the

sentence—to present the case again to his accusers and persecutors, demonstrating point by point the illegality and injustice and oppression done him, and only to have them reaffirm it all, and deliberately and relentlessly, in violation of the Constitution, refuse to state any ground of their decision. Let the reader suppose himself vainly struggling under such outrage for month after month, until the months become years, seeing every day such cruel and wicked oppression grinding his wife and children as well as himself. Let him also see the case so published, by its corrupt and wicked authors, in the official reports, as this disbarment case has been, giving in full the accusation and everything said by his accusers against him, and utterly suppressing his answer to the accusation and everything said by him in his defense, so as to misrepresent him and injure his good name to the utmost and permanently.

In this particular case everything within the scope of such punishment has been, and, after the lapse of more than four and a half years, is still being actually and unrelentingly inflicted. Everything stated on pages 119-122 above has been actually inflicted. I mention this particularly because the authors of this oppression, by means of their control of the newspapers, are constantly and with unmitigated falsehood stating to the people that such is not the case. For instance, in one of the venal weeklies of San Francisco, in a number issued March 4, 1899, there appeared an article attempting, with gross falsehood, to justify the disbarment, and, among other things, saying:

* * “ His sentence made no difference to him. He has practiced away as usual ever since, and, while not heard at

all by the Supreme Court, he has appeared before more than one department of the Superior Court, by dint of getting himself substituted as plaintiff in his action. More than that, * * * he is a good lawyer, and has the reputation of being one of the best brief writers in the State of California. He does business that way now."

I wish those who read these pages to know that all such statements to the effect that I have still been able to practice my profession are utterly false. Since the disbarment I have not been employed in the preparation of so much as a single brief. The allusion to my appearance in the Superior Court has no other support than my appearance there in only one department and in only two small cases which depended upon the same facts and were tried together as one case. In the Federal courts I have appeared in one case only, and in that received no fee. My office practice also was utterly destroyed by the disbarment. And the reason why such has been the effect of the disbarment is well known. Such has been the corrupting and demoralizing effect of the practices of The Southern Pacific Company in this State that every one lives in an atmosphere of craft, suspicion, fraud, violence, fear and what is called "policy." People employ a lawyer only in the hope of obtaining benefit. They have refrained from employing me out of fear that if they should be known to do so they would for that reason be marked out for destruction. As stated on page 14 of this paper, the authors of the disbarment wield, in its most effective form, the terrible weapon of the boycott.

But to appreciate to its full extent all that is included in such a punishment, it is needful to consider what is the nature and extent of the right to adopt and practice the law as a profession.

13. The Right Which an Attorney at Law Has to the Practice of his Profession.

The Right of the People to Employ and to be Represented by Attorneys at Law.

In the editorials published by The Southern Pacific Company in their newspapers before the mock hearing of the citation—and with the plainly-evident *motive* to bolster the outrage which was about to be inflicted and to divert attention from the villainy of the Associate Justice Ralph C. Harrison, which was exposed in the brief, the position of the attorney at law is studiously and cunningly represented as that of an underling, a subordinate, a servile creature “licensed to plead” (see the Appendix p. 14), having no *right* but only a “*privilege*” (Id.). His natural and inalienable right to a hearing is called “the privilege accorded” (Id. p. 17). Over and over again he is called, with the plainly-evident purpose to belittle his position, and to represent it as that of a servile underling, an “officer of the court” (Id. p. 10), “the unworthy shoulders of its officer” (Id.). For the same purpose such expressions are used as “officers of the court” (Id. p. 14), “an arrogant and browbeating San Francisco lawyer” (Id. p. 15),—“the Court cited him as an officer of its own” (Id. p. 19)—“generally neither press nor people take concern when a court castigates one of its own attorneys” (Id.). And in connection with these expressions the victim is called “Attorney Horace W. Philbrook” (Id. p. 6), “Attorney Philbrook” (Id. p. 10), “Attorney Philbrook” (Id. p. 11).

All this belittling of the profession of an attorney at law, the idea and the very terms used and the iden-

tical motive was copied with the utmost precision into the judgment of disbarment. Adopting the terms "Attorney Horace W. Philbrook" of *The Evening Post* and the terms "Attorney Philbrook" and "licensed to practice" of *The Record-Union*, the judgment of disbarment opens with the words: "Horace W. Philbrook, a licensed attorney" (see the Appendix p. 22). *The Record-Union's* transformation of the victim's inalienable right to a hearing into a "privilege accorded" was copied in the words "he was allowed to make an oral argument in his own defense." *The Record-Union's* exhibition of the victim as a mere underling, a servile creature, *owned* by the Court, "one of *its own* attorneys," an "officer of *its own*" is copied in the words, "This is a palpable attempt to influence a decision of this Court by base appeals to the supposed timidity of its Justices, *and, made, too, by an officer of the Court*" (Id. p. 27), and further on in the words, "And when the punishment of such an offense is within the jurisdiction of the Court, as in the case of one of *its own officers*" (Id. p. 28). *The Record-Union's* transformation of the victim's right to his profession into a mere "privilege" appears in the judgment of disbarment in the words of Wm. H. Beatty, the Chief Justice: "As to the character of the penalty I concur in *the view of the Court* that it should be suspension of his *privileges* as an attorney" (Id. p. 32).

And after the disbarment was inflicted it was upheld by The Southern Pacific Company in editorials published in *The Record-Union*, and by means of that same studious and cunning belittling of the profession of attorney at law. See the expressions used: "The Limits of an Attorney's Privilege" (Appendix p. 34),

“approve the Court for punishing one of its own officers” (Id. p. 36), “the courts * * to curb their own officers” (Id. p. 42). “The courts ought to have the power * * to castigate their own officers” (Id. p. 46), “the power to discipline the officers of the Court” (Id. p. 48).

The expressions quoted above are, however, but examples of the spirit and tone of the entire judgment of disbarment, a spirit and tone which follows with the utmost precision the editorials of The Southern Pacific Company.

And here, too, the judgment of disbarment is utterly false throughout.

An example of what is meant when an attorney at law is honestly spoken of as an “officer of the court” may be seen in *Lawyers' Tax Cases* 55 Tenn. 651, where he is declared to be “an officer in a court of justice, who is employed by a party in a cause to manage the same for him as his advocate.”

The attorney is “an officer *in a court*, but he is not *owned by the court*—he is not “an officer of *its own*,” one of “*its own* officers,” as in this judgment of disbarment he is, by The Southern Pacific Company and their corrupt Supreme Court of California, falsely and wickedly declared to be. On the contrary he is “*employed by a party* in a cause to manage the same *for him as his advocate*.” If he could be said to be owned by anybody, it would be *by the party, by the client*, but *never by the court*. This fact, though plain to even the dullest understanding, will now be shown to be expressly declared by the constitution and the law.

The right to practice in the courts the profession of attorney at law, and the right of the people to employ and to be represented by attorneys at law, have always

been expressly guaranteed by the Constitution of California.

In the Constitution adopted in 1849 the provision was as follows (Art. I, Sec. 8) :

* * "and in every trial *in any court whatever*, the party accused shall be allowed *to appear and defend* in person and with counsel, as *in civil actions*."

Here was an express guaranty of the right, for "*every trial*," and not only in criminal cases, but "*in civil actions*" and "*in any court whatever*," a right guaranteed in the *constitution itself*.

The Constitution of 1879 is more full in its guaranty of the same right. Besides a provision substantially the same as in that of 1849, just quoted, it expressly makes the profession of the attorney at law absolutely essential to the government of the State, expressly providing (Art. VI, Sec. 23) that all Superior Court Judges and all Justices of the Supreme Court shall be chosen from members of that profession. It also provides (Art. I, Sec. 21) : "nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens," and also (Art. XXII, Sec. 11) that "all laws relative to the present judicial system of the State shall be applicable to the judicial system created by this Constitution until changed by legislation." And among the laws "relative to the present judicial system of the State," thus expressly adopted by the Constitution, is the following (C. C. P. § 275) :

"**Any citizen** or person resident of this State who has *bona fide* declared his or her intention to become a citizen in the manner required by law,

of the age of 21 years, of good moral character, and who possesses the necessary qualifications of learning and ability, **is entitled** to admission as attorney **in all the courts of this State."**

And even that is not all. There are many other provisions of the codes and other statutes of California, all of them expressly adopted by the Constitution, which guaranty over and over again the same right.

In *People vs. Naphthaly* 105 Cal. 641, a conviction of crime was held unlawful and set aside upon the ground that the accused, though himself an attorney at law, had not been informed by the court of his right to employ and be represented by an attorney at law.

Such then is, in California, the profession of attorney at law. It is not a mere "privilege," it is a right. It is one of the lawful and common pursuits of life. It is the right of the people. It is a right as high as the highest right of the Supreme Court itself, being a right expressly established and guaranteed by the same instrument by which the Supreme Court was *created*.

And such, too, is the right in other States of the Union. In the *Case of Austin* 5 Rawle 203, Chief Justice Gibson, one of the greatest of American judges, said :

* * "to subject the members of the profession to removal at the pleasure of the court, would leave them too small a share of the independence necessary to the duties they are called to perform to their clients and to the public. * * It is indispensable to the purpose of its creation to assign it a high and honorable standing, but to put it above the judiciary, whose official tenure is good behavior, and whose members are removable from office by the legislature, would render it intractable ; and

it is therefore necessary to assign it but an equal share of independence."

And the importance of the right to employ and to be represented by an attorney at law in the conduct of a suit is supreme. Any person may at any time become involved as a party to a suit or proceeding in the courts,—so involved that everything of value to him, rights more important to him than life itself, may be at stake. And even though he may be a lawyer himself, still it may be necessary to his safety to urge his personal character and qualities, things of which he cannot speak for himself. So impossible is it for a person to act properly or adequately for himself in such a situation, that to deny the right to an attorney, or to have that attorney *owned by the Court*, is to deny to the party, the client, the fundamental right of self-defense.

The court is for the use of the individual; the individual is not for the use of the court. The attorney is employed by the individual, by the party, and his duty is to the party, to the client. And all this is embodied in the guaranty of the Constitution just stated.

In *Lawyers' Tax Cases* 55 Tenn. 565, the Court said:

"The rights of the attorney in his capacity as such, are the rights of the people, involving their lives, liberty and property, necessary to the well being and good order of society, and absolutely indispensable to the safety of all well appointed governments."

In *Dickens' Case* 67 Pa. St. 169, the Court said:

"The necessities of men, in a high state of civilization, require the profession of the law as a distinct calling; one to be exercised by men trained to it by a long course of study, and qualified by

skill and learning to understand, protect and assert the rights of others, who by reason of the state of society, or their own inability, can not act for themselves." * *

To the powerful and wealthy organization, The Southern Pacific Company, the right to be freely and fully represented by an attorney at law is of no importance; for the wealth and power of their organization are to them a sure and unfailing guaranty of the full benefit of being so represented. It is the single individual that has need of the right to be so represented; and the more defenseless he is the more he has need of that right. In the case here the denial of it to Mrs. Fanny Levinson and her daughters was a part of the denial of justice; it denied them even so much as the form of a hearing of their case.

To obtain a full advantage of their use of the courts, the powerful organization, The Southern Pacific Company, often need to control the attorney of their victims. One such case is stated on page 64-75 above, where, in order to use their injunction suit with supreme success, it was needful for them not only to control the attorneys who represented the people, but to conceal from the people the fact of their having such control. In the judgment of disbarment (see the Appendix p. 26) they have condemned a full and bold assertion of the rights of the victims as "unbridled license." In the same spirit they made for use in their injunction suit a special bridle for one particular attorney whom they were to set up as appearing ostensibly against them—thereby to reduce his utterances against them to "bridled license." In the case here, in order to whitewash the villainy of their

agent, the Associate Justice Ralph C. Harrison, it was needful to control the attorney who had exposed him. To that end they announced in *The Evening Post* of Dec. the 13th: "We hope that the Supreme Court will allow him to withdraw his insolent and disrespectful brief and give him an opportunity to apologize" (see the Appendix p. 9). Owning the Court, it was still needful to their complete success in using it, to have all attorneys uphold its decisions. They therefore demanded, as in *The Record-Union* of Dec. the 13th, that all attorneys at law "shall, as officers of the court, maintain its dignity and set the example of respect for it which it demanded of all." And this they followed up by making, out of their editorials in *The Record-Union*, the judgment of disbarment, making those editorials with their false pretense that the court *owns the attorney*, that he is one of "*its own officers*" (Id. pp. 19, 28) a judgment of the Supreme Court of the State, and placing those editorials, as such judgment, in the reports of the decisions of the Court as a precedent having *actually* (though falsely) the force of law.

And all this has been put into actual and common practice. Nothing is more common than to see in the courts the attorneys of the great corporations bearing themselves with easy confidence, as if exemplifying—to use the words of Burke—"the urbanity and politeness of extortion and oppression"; while, with a few exceptions, it is the common practice for attorneys who appear only for individuals, to address the courts, not like freemen claiming rights, but in the manner of cringing underlings begging for favors.

To own any person's attorney, to be able to control the manner in which he handles the case, as in effect to

own the person whom that attorney represents. To be able to destroy the attorney is to be able to destroy the client employing that attorney.

Take now the case of the murder of the child by its father stated on p. 122 above. In ancient times a father was held to *own* his children and to have the right to destroy any of them. In those times the father would have justified his crime by saying: "It was one of *my own* children. I had the right to destroy her."

So in this disbarment. Its authors justify it by saying that the Court *owns* the attorney, that he is one of "*its own officers*," and that therefore it has the right to destroy him—they say "when the punishment of such an offense is within the jurisdiction of the Court, as in the case of *one of its own officers*" (see the Appendix p. 28). But what was aimed at was to destroy the cause of Mrs. Levinson and her daughters. And the justification that the Court *owned the attorney* was dictated by The Southern Pacific Company, who owned the Court and used it. What is really meant is that The Southern Pacific Company aims to own all attorneys, that it may own effectually and destroy at will the rights of any and every individual.

Consider now the right of the attorney to his profession. The profession of the attorney-at-law is a lawful and necessary branch of labor, a useful and lawful vocation.

In the *Lawyers' Tax Cases*, 55 Tenn. 654:

"The right to practice law is the right of thought and mental labor common to all."

In *People vs. Marx*, 99 N. Y. 386 (decided in 1885), the Court said:

“And the fourteenth amendment to the Constitution of the United States provides that ‘no state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.’ These constitutional safeguards have been so thoroughly discussed in recent cases that it would be superfluous to do more than refer to the conclusions which have been reached. Among these no proposition is now more firmly settled than that it is one of the fundamental rights and privileges of every American citizen to adopt and follow such lawful industrial pursuit, not injurious to the community, as he may see fit. * * * Liberty, in its broad sense, as understood in this country, means the right not only of freedom from servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation.”

In *Ex parte Parrott*, 6 Sawyer 349, the provisions of the Constitution of California forbidding corporations to employ Chinese were declared void and set aside by the United States Circuit Court as being a violation of the guaranty of the fourteenth amendment of the United States Constitution just quoted. Among the grounds of the decision the Court adopted the following language of Justice Bradley of the United States Supreme Court:

“In my judgment the right of any citizen to follow whatever lawful employment he may choose to adopt * * * is one of the most valuable rights, and one which the legislature of a State cannot in-

vade, whether restrained by its own Constitution or not. * * This right to choose one's calling is an essential part of that liberty which it is the object of government to protect; and a calling when chosen is a man's property and right."

In setting aside the disbarment of Stephen J. Field (*People ex rel. Field vs. Turner*, 1 Cal. 143), the Court said:

"An attorney, by his admission as such, acquires rights of which he cannot be deprived at the *discretion* of a court any more than a physician of the practice of his profession, a mechanic of the exercise of his trade, or a merchant of the pursuit of his commercial avocations."

This language was reaffirmed twelve years later in *Fletcher vs. Daingerfield*, 20 Cal. 429.

And language to the same effect was used by the Supreme Court of the United States in *Ex parte Garland*, 4 Wall. 333.

In *Ex parte Houghton*, 67 Cal. 517, the Supreme Court of California, in 1885, in refusing to disbar one Houghton, an attorney, said:

"A judgment against the respondent will deprive him of personal and property rights."

In *Ex parte Steinman*, 96 Pa. St. 236-7, the Court said:

"The office of an attorney is his property, and he cannot be deprived of it unless by the judgment of his peers or the law of the land, this last phrase meaning, as we have been taught by Lord Coke, 'due process of law.'"

In *Longshore Printing Co. vs. Howell*, 26 Oregon 546 (decided in 1894), the Court said:

"Every person has a right to require that he be protected in his property rights. The labor and skill of the workman, or the professional man, be it of high or low degree, the plant of a manufacturer, the equipment of a farmer, the investments of commerce, are all in an equal sense property."

The right of the attorney to his good name is also one of his inalienable rights.*

The rights of the attorney to his profession and good name are also representative of the rights of his wife and children.†

In *Dent vs. West Virginia*, 129 U. S. 121, it was said by the Supreme Court of the United States:

"It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex and condition. This right may, in many respects, be considered as a distinguishing feature of our republican institutions. Here all vocations are open to every one on like conditions. All may be pursued as sources of livelihood, some requiring years of study and great learning for their successful prosecution. The interest, or, as it is sometimes termed, the estate acquired in them—that is, the right to continue their prosecution is often of great value to the possessors, and cannot be arbitrarily taken from them, any more than their real and personal property can be thus taken."

In *Yick Wo vs. Hopkins*, 118 U. S. 369-370, the Supreme Court of the United States held a laundry ordi-

* *Civil Code of Cal.*, Sec. 43; *Blackstone Comm.* Vol. 1, 129; *Gulf, Col. and Santa Fe R. R. Co. vs. Ellis*, 165 U. S. 159; *Entick vs. Carrington*, 19 Howell's State Trials 1029, 1066; *Boyd vs. United States*, 116 U. S. 626.

† *Bradwell vs. Illinois*, 16 Wall, 141; *Ex parte Wall.*, 107 U. S. 317-18; *Civil Code of Cal.* Secs. 174, 196.

nance of San Francisco to be a violation of both the 13th and 14th amendments of the Constitution of the United States, and because the ordinance was aimed at Chinese laundrymen and gave the Board of Supervisors the power arbitrarily to grant or withhold a laundry license in each particular case. The Court said:

* * * "For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life at the mere will of another, seems to be intolerable in any country where freedom prevails as being the essence of slavery itself."

In *Ex parte Wall*. 107 U. S. 302, Justice Field has summarized all the decisions which treat the attorney's right to his profession as less than what it is above shown to be, by pointing out that in every such decision the Judges making it were sitting as Judges of their own case, and engaged in oppressing the attorney. It is thoroughly settled that such decisions are entitled to no respect.*

But nowhere can there be found any case in any way comparable in wrong and outrage with the particular disbarment here exhibited.

14. The Disbarment Unlawful Because a Conviction and Punishment for Crime and by a Court Without Jurisdiction to Convict or Sentence for Crime and Without Trial by Jury.

In *Ex parte Garland* 4 Wall. 333, (decided in 1866) the Supreme Court of the United States held an act of

* *Washington Insurance Co. vs. Price*, Hopkins Ch. 2; *McCulloch vs. Maryland*, 4 Wheat. 401; *Entick vs. Carrington*, 19 Howell's State Trials 1029, 1066; *Boyd vs. United States*, 116 U. S. 627.

Congress to be unconstitutional, which forbade any person to practice law in the Federal courts, unless he should first take an oath that he had taken no part in support of the southern confederacy in the Civil War. The ground of the decision was that, although the act did not say in express terms that its purpose was to inflict punishment on attorneys who had aided the confederacy, yet that such was in fact its purpose, and that it was *therefore* a criminal law and *ex post facto*. The Court said (at pp. 379-80):

“The question in this case is, not as to the power of Congress to prescribe qualifications, but whether that power has been exercised as a means for the infliction of punishment, against the prohibition of the Constitution.”

Another decision by the same Court, and based upon the same principle, was *Wong Wing vs. United States* 163 U. S. (decided in 1896). There the Court ruled that a certain act of Congress, although it did not openly purport to be a criminal act, yet was in fact such, and unconstitutional, it provided for a conviction without a trial by jury. The act, in providing for the exclusion of Chinese aliens, declared that any of them who should come into the country unlawfully should be arrested, and, after a trial by any Justice, Judge or Commissioner of the United States, should, if found guilty of having come into the country in violation of the act, be imprisoned at hard labor for a period not to exceed one year and then deported to China. The Supreme Court said :

“The question now presented is whether Congress can promote its policy in respect to Chinese persons by adding to its provisions for exclusion

and expulsion, punishment by imprisonment at hard labor to be inflicted by the judgment of any Justice, Judge or Commissioner of the United States, without a trial by jury.

* * " But to declare an unlawful residence within the country to be an infamous crime, punished by deprivation of liberty and property, would be to pass out of the sphere of constitutional legislation, unless provision were made that the fact of guilt should be first established by a judicial trial. It is not consistent with the theory of our government that the legislature should, after having defined an offense as an infamous crime, find the fact of guilt and adjudge the punishment by one of its own agents."

Many decisions have been made upon the same principle, decisions to the effect that where a court has no jurisdiction to try any criminal case, any judgment of such court is void if it is in fact a conviction of a crime, even though not openly stated to be such. Three such divisions, in each of which the principle was applied with remarkable clearness, are given in the foot note.*

In *State vs. Lawrence* 45 Mo. 492, in holding that the judgment was a conviction for crime, and therefore not within the jurisdiction of the court making it, the Court said :

" It is evident from a collation of these several provisions, that the Legislature treated a forfeiture of office, and a disqualification to hold office and vote, as elements and portions of the " punishment " to be visited upon the convicted offender. He is deprived of office and disqualified, as in punishment for his official misconduct. Punishment, in the legal sense, is some pain or penalty war-

* *State vs. Ryan*, 70 Wis. 676; *State vs. West* 42 Minn. 147; *State vs. Lawrence*, 45 Mo. 492.

ranted by law, inflicted on a person for the commission of a crime or misdemeanor, whether declared by the court, or superinduced as a legal result of conviction. An offender may be punished as well by forfeiture and disqualification as by fine and imprisonment."

And in *State vs. West* 42 Minn. the Court, after reasoning to the same effect, said :

"As now constituted that court has no jurisdiction to try any criminal case * * and its judgment therein was therefore absolutely void."

The principles enforced in those decisions plainly should overthrow this judgment of disbarment. It is plainly the invention of a crime, the denial not only of a trial by jury but of any trial whatever, a conviction for crime, and the infliction of a cruel and unusual punishment. This is not only true in fact, it is openly avowed. It has been done at the command and for the benefit of The Southern Pacific Company. It is a clear usurpation, a clear tyranny. By virtue of express provisions of the Constitution of the State, the Supreme Court of California is utterly destitute of any jurisdiction to try any criminal case whatever, or to sentence or impose punishment for crime.*

The Setting Up of a Court of Star Chamber by the Great Predatory Corporations.

The guaranty placed by the American people in the 14th Amendment of the Constitution of the United

* Constitution of Cal., Art. 6.

States, that no State shall deprive any person of life, liberty or property without due process of law, was taken from Magna Charta, the great charter wrested from an English king in 1215. Sir Edward Coke, in his Institutes, published in 1629, states the guaranty thus :

“ No man shall be disseized, that is, put out of season, or dispossessed of his freehold (that is) lands, or livelihood, or of his liberties, or free customs, that is, of such franchises and freedoms or free customs as belong to him by his free birth-right, unless it be by the lawful judgment, that is, verdict of his equals (that is, of men of his own condition) or by the law of the land (that is, to speak it once for all) by the due course and process of law.”

And he then says (at p. 50) :

“ Against this ancient and fundamental law, and in the face thereof, I find an Act of Parliament made, that as well justices of assize, as justices of peace (without any finding or presentment by the verdict of twelve men) upon a bare information for the king before them made, should have full power and authority by their discretions to hear and determine all offenses and contempts committed or done by any person or persons against the form, ordinance and effect of any statute made and not repealed, etc. By color of which Act, shaking this fundamental law, it is not credible what horrible oppressions, and exactions, to the undoing of infinite numbers of people, were committed by Sir Richard Empson, Knight, and Edmund Dudley, Justices of Peace, throughout England. * *

“ But at the Parliament holden in the first year of Henry VIII, this Act of 11 Henry VII is recited and made void and repealed, and the reason

thereof is yielded, for that, by force of the said Act it was manifestly known that many sinister and crafty, feigned and forged informations had been pursued against divers of the king's subjects, to their great damage and wrongful vexation; and the ill success thereof and the fearful ends of these two oppressors should deter others from committing the like, and should admonish Parliaments, that, instead of this ordinary and precious trial by the law of the land, they being not in absolute and partial trials by discretion."

Gneist, in his *History of the English Constitution*, in the chapter upon the struggle against the arbitrary and corrupt courts of the Stuarts, says (Vol. 2, pp. 183, 185) of the Star Chamber :

"The proceedings in the Star Chamber were never regulated by law. * * A court, consisting entirely of officials * * without a jury * *

"Thus arises a State court of justice from which there is no appeal, with a somewhat indefinite penal jurisdiction. * * Comprising in one body a ministerial council and a State court of justice, the Star Chamber could wield an irresistible power over persons and property, by which it systematically trampled down all resisting independence, and finally also every right."

Empson and Dudley, atrocious as was their conduct, did not, however, proceed in it until an act of parliament had first been made authorizing them so to do. So, too, the Star Chamber was established as such by an act of parliament, an act which in its preamble declared that the purpose of creating such a court was *to secure the certain and speedy punishment of all persons who, in the opinion of the court, deserved punishment.*

How much more bold is tyranny and oppression in the United States ! Our tyrants and oppressors do not so stoop as to procure first an act of the legislature. They seize and use the courts with direct usurpation, themselves writing the decisions of the courts, making those decisions to be themselves the law by which they are to be supported, and demanding that all those who represent people in the courts, " shall, as officers of the Court, maintain its dignity, and set the example of respect for it which is demanded of all." (See the Appendix p. 14.)

The disbarment has been inflicted as a " punishment," a " penalty " for an " offense," and this is openly avowed in the very language in which it is expressed. The " punishment," the " penalty " inflicted is the forfeiture of the victim's means of livelihood, the blasting of all the fruits of his many years of toil and study and cultivation, and the publication of the victim, in the name of the State, in defamation and calumny throughout the nation and for all future time, blasting him in his good name throughout the nation and forever. To give it the greatest possible effect, it is done in the name of the State. See the language of Story, quoted on p. 200 above, of the tyrannies practiced in the times of the Stuarts, " against persons odious to the Court and its favorites * * cruel and vindictive punishments inflicted."

It is said by Sir Edward Coke (2 Inst. 48) :

" Every oppression against law, by color of any usurped authority, is a kind of destruction, for it is the means by which destruction is wrought. And it is the worst oppression that is done by color of justice."

And by Charles Sumner :

“ Power divorced from right is devilish ; power without the check of responsibility is tyrannical ; and I need not go back to the authority of Plato, when I assert that the most complete injustice is that erected into the form of law.”

The only trial allowed is an infamous mockery, and solely by those making the accusation and claiming to be the persons immediately aggrieved.

The “ offense,” the crime invented, is that of properly presenting a case to a court of justice, the seeking of justice in a court of justice. And it is made a Star Chamber crime, that is, a crime where the accused can have no protection of trial by jury, but where his accusers, though they are but unspeakable rascals, sit as judges and jury on the trial of their own accusation, and where their victim has no appeal. This was the essential feature of the infamous court of Star Chamber, of world-wide notoriety, which in England became one of the worst instruments in overthrowing the liberties of the people, and was one of the chief causes that led to the execution of Charles the First by his outraged subjects.

As said by Lord Mansfield, in a passage above quoted ; the deliberate decision of a case by a higher court “ establishes the law, and makes a precedent for future cases. * * *This* will be a precedent.”

A great American judge (Hon. Henry Clay Caldwell) has lately said :

“ Reduced to its last analysis, the intelligent and impartial administration of justice is all there is of free government. It is the public justice that holds the community together. It is to the courts

that all must look for the protection of their liberty, person, property and reputation."

Consider now what has been done in the case here. It is not alone the destruction of the attorney and the unspeakable outrage to the three defenseless women, an aged widow and her daughters, his clients. The deliberate infliction of it, the persistence in it, the publication of the decision in the Reports, has fixed it as a precedent, an authority to be followed in the future, a foundation prepared for future and for reaching outrages and oppressions, "to the undoing of infinite numbers of people."

The invention of such a crime, the prescribing for it a punishment so terrible, the turning of the Supreme Court of a State, by usurpation, into such court of Star Chamber, to be held by the wicked agents of such organizations as The Southern Pacific Company, has established an arbitrary power over those who represent persons that are parties to or are interested in cases in the courts. "An advocate personates his client; he has taken upon him the whole charge of his interests; he stands in his place." "The rights of an attorney, in his capacity as such, are the rights of the people, involving their lives, liberty and property." To terrorize into silence the representatives of one party to a suit, or drive him into making a feeble argument or into pretending that his client has no case, is to use the Court, and with it the whole power of the people, as a gigantic engine for robbery and oppression and for all manner and any degree of wrong and outrage. And, such is the very purpose for which, in the case which is here being exhibited, the outrage here shown has been committed. In the atrocity of the crime committed,

and in what, if it is allowed to triumph, is to be the far and wide reach of its evil effects, the case equals, if it does not exceed, anything done by Empson and Dudley.

And the same is true of the disposition of each of the three appeals of Mrs. Levinson and her daughters,—the denial of the right to an attorney, the denial of the right to have an advocate, the denial of the fundamental right of a hearing, the denial of an impartial tribunal, and the corrupt and false decisions based upon and reeking from end to end with lies and trickery and malice and wickedness. All these things have not only been committed upon the three defenseless women, a dead man's surviving and defenseless family; they have been made precedents and authorities to be followed in like practices against others.

Empson and Dudley acted as judges, but they were in fact the agents of the avaricious monarch, Henry the Seventh, in wresting for him inheritances and property from various people under color of forfeitures for non-compliance with some requirement of law—"to the undoing of infinite numbers of people." And it was for such crimes that they were taken to Tower Hill and there publicly hanged and quartered, with the tortures characteristic of that age and of that mode of punishment. And the ill success of their practices "and the fearful ends of these two oppressors," and of others who from time to time were the willing agents of oppression and tyranny, did in England "deter others from committing the like," and were the lessons to tyrants and oppressors by means of which the English people have acquired the measure of liberty and justice and domestic safety which they now enjoy.

In the United States, instead of titled monarchs like

the Tudors and the Stuarts, we have cunning, merciless predatory plutocrats, whose enormous wealth has been acquired by fraudulent and sharp practices in a country abounding in natural wealth, and who now by the machinery of wealthy and powerful organizations of corporations, by the monopolies which they hold, by standing between multitudes of people and their means of livelihood, by dictating the nominees of party conventions and the appointments to office, and by controlling the press, are engaged in absorbing the wealth and corrupting and enslaving the people. Their Empsons and Dudleys are such Judges of the higher courts of whom examples may be seen in those who as Justices of the Supreme Court of California have committed and are keeping up the crimes here exposed. It is such agents of oppression and tyranny who in the United States are ever making the predatory rich more wealthy, and, to aggrandize and consolidate their powers, ever reducing good and deserving people to the condition where they are poor and needy and helpless—"to the undoing of infinite numbers of people." Such an organization of corporations is The Southern Pacific Company. And in these pages there is shown an example of their work.

15. The Disbarment Unlawful Because Not "Permanently or For a Limited Period."

The judgment of disbarment is in its own terms expressly declared to be:

* * "for the period of three (3) years from this date and thereafter until the further order of this Court removing such suspension."*

*See the Appendix p. 29.

But the statute authorizing the disbarment of attorneys expressly declares that the only disbarment allowable is a disbarment "permanently or for a limited period." (Code Civil Procedure, Secs. 18; 299).

And the same statute declares that every judgment must be "the final determination of the rights of the parties in an action or proceeding." (Id. Secs. 18; 577).

And the Constitution of the State expressly makes these provisions binding on the Courts, and "mandatory and prohibitory." (Art. I, Sec. 22, Art. XXII, Secs. I, II).

And the Supreme Court of California has expressly ruled that any judgment which is not such a "final determination" is unauthorized and unlawful.*

16. The Pledge Laid Upon the Court to Decide the Probate Appeal Against Mrs. Levinson and Her Daughters.

Take now the new accusations set out in the disbarment judgment in the following passages :

"It [the brief] also contains language highly reprehensible * * and his answer contains such language concerning another learned judge of the Superior Court who decided the other cases mentioned in said Philbrook's answer."†

"As respondent has in the same connection assailed not only * * the two Superior Judges above referred to, but also certain reputable lawyers who were at one time associated with him in the litigation, and a special administrator who was appointed at his own instance and out of his own office, charity might possibly suggest that he is the victim of abnormal suspicion and distrust.‡

This language was used concerning the appeal of

**People vs. Gold Run D. & M. Co.*, 66 Cal, 156. *Stuckton & C. Works vs. Ins. Co.*, 98 Cal., 577.

†See the Appendix, p. 23.

‡See the Appendix, p. 26.

Mrs. Fanny Levinson and her two daughters from the decree of the Probate Court settling the account of the embezzling and suspended administrator—the case stated on pages 55–59 above. When the disbarment was made that case was pending in the Supreme Court, but had not been given a hearing. In the passages of the disbarment judgment just quoted, the attorney who was carrying on that case for Mrs. Levinson and her daughters is condemned for presenting a complaint of the wrongs against which they were seeking justice, and the Justices are made to take sides in advance with the persons complained of. By the disbarment the three defenseless women were deprived of an attorney in that case also, a pledge laid upon the Court to decide the case against them, and a threat of disbarment issued against any attorney who should attempt to urge for them the grounds upon which they were seeking justice.

And afterwards the authors of the disbarment, after depriving those three defenseless women of the right to an attorney, and after denying them a hearing of their case, decided it against them, in accordance with the pledge which, in the disbarment judgment, they had so wickedly laid upon the Court. That decision of the appeal from the Probate Court was made August 6, 1895, and the petition of Mrs. Levinson protesting against it and asking for a hearing was denied without assigning a reason, and struck from the files. That decision appears in the Reports as *Estate of Levinson*, 108 Cal. 450.

17. The Pledge Laid Upon the Court to Decide the Accounting Suit in Favor of the two Newmans.

Throughout the judgment of disbarment, the most emphatic pledges are expressly and over and over again laid upon the Court—the most express and emphatic pledges taken in advance—to decide the case in which the brief was filed, in favor of the respondents, the two Newmans. To quote the passages in which such pledges most particularly appear, would be to quote almost the entire judgment of disbarment, not only the part signed by five Justices, but also that written specially by William H. Beatty, the Chief Justice. Instead of quoting the passages at length, I therefore refer to the pages of the Appendix in which they appear.

The passages in the part of the disbarment judgment signed by five Justices, in which such pledges most particularly appear, occupy almost all of pages 23, 24, 25, 26, and 27 of the Appendix.

In the part written specially by Wm. H. Beatty, the Chief Justice, the pledge first appears at the very beginning in the words, "Mr. Philbrook's assault upon a member of this Court—gross and unjustifiable as I deemed it to be—" (See the Appendix, p. 29). And it is all that part of his concurring opinion which he calls "the other branch of the case" (*Id.* p. 32), and which constitutes all that part of his concurring opinion shown on pages 33–34 of the Appendix.

The passages which are here particularly referred to constitute almost the entire bulk of the disbarment judgment. That the declarations there made are an express taking of sides upon the grounds of the case in which the brief was filed—a taking of sides with the

two Newmans and before the case was heard—may be seen by comparing the language with the facts of the case as stated on pages 16-54 and 86-106 above, and with the grounds of the case as stated on pages 79-97 above. It may also be seen—where it is openly confessed by the authors of the disbarment—in the final decision of the case afterwards made by them in favor of the two Newmans. See particularly the language used in that final decision, and shown on pages 54, 61, 62, 63, 64, 65, 66, 67, 71-72, 73-75 of the Appendix.

The passages particularly referred to are, however, but examples of the plainly evident spirit and meaning of the entire judgment of disbarment. It was an express taking of sides upon the case in which the brief was filed, and in advance of a hearing of the case. It was a mass of vindictive and most effective pledges laid upon the Court to decide the case in favor of the two Newmans, and not only for the purpose of shielding the Associate Justice Ralph C. Harrison and upholding him in his villainy, but also for the purpose of justifying the other Justices in the declarations concerning the case which were thus laid down by them in the judgment of disbarment. Thereafter, and by reason of the judgment of disbarment, those of the Justices who took part in it, and the two (Frederick W. Henshaw and Jackson Temple), who immediately afterward (January 7, 1895) took office as Justices and joined with the others in upholding the disbarment, most effectively made the case of the two Newmans their own, so that when they afterwards acted in the case, they acted as judges of their own case. That the judgment of disbarment could not possibly fail to have such effect, and that by means of it, all the Justices of the Court were

corruptly and wickedly disqualified from acting as Judges of the case in which the brief was filed, is manifestly true and is emphatically sustained by the authorities.*

In *Meyers vs. Shields*, 61 Fed. the Court said (at p. 725):

"The object of all legislation pertaining to judicial or quasi-judicial proceedings is to furnish an impartial and wholly disinterested tribunal, before which such proceedings are instituted and carried forward. It is to carry out the constitutional guaranty that no man shall be deprived of life, liberty or property without due process of law, that the chief safeguard of a disinterested judge, jury, referee, or arbitrator is so carefully provided by legislation and protected by judicial scrutiny. The most notorious criminal enjoys these safeguards to the extent that the magistrate who presides at his preliminary hearing must be disinterested. Every grand juror who sits in the grand inquest as to his crimes must be disinterested; every petit juror who tries the facts after the grand jury presents its indictment must be disinterested; the judge who presides at the trial,—each and all must be wholly impartial and disinterested in the result. Even after conviction, if it is made to appear that by some mistake an interested or disqualified juror has participated in the trial and verdict reached, such interest and bias on the juror's part contaminates the whole proceeding, poisons the fountains of justice at their source, and makes the verdict null and void. Even in a civil suit, our system of judicial proceedings assures to each party a fair and disinterested judge and jury to pass upon the law and facts in controversy between them."

* C. C. P. of Cal., § 170; Constitution of Cal., Art. XXII, Secs. 1, 11. Civil Code of Cal § 3528; *Wash. Ins. Co. v. Price*, 2 Hopk. Ch. 2; *Ry. Co. v. Howard*, 20 Mich. 25; *Stockwell v. Tp. Board of White Lake*, 22 Mich. 350.

And it is to be noticed that all this feature of the judgment of disbarment, the laying of pledges upon the Court to decide the accounting suit in favor of the two Newmans—that all this was, in advance of the disbarment, and even before the mock hearing of the citation, demanded and published by The Southern Pacific Company in editorials in *The Record-Union*. See the editorial published on December the 13th (Appendix pp. 10-15) and that published on December the 20th (Id. pp. 16-21).

**18. The False and Dishonest Treatment of the Facts.
The Pitiable Farrago Put Forward to Whitewash the
Associate Justice Ralph C. Harrison.**

Consider now how self-evidently false and dishonest is the treatment of the facts, and what a pitiable farrago of self-evident falsehoods it is, with which it is sought in the judgment of disbarment to whitewash the Associate Justice Ralph C. Harrison.

It is in the part signed by five Justices that the work is done with far the more cunning, with a cautious hiding behind generalities and avoiding any detailed statement of the facts. The conclusion asserted is that stated in the following words (see pp. 158-159 above) :

* * “ he has been unable to show any ground, any decent pretext, for the outrageous verbal assaults which he has made upon a member of this Court. Nothing appears in connection with the transaction so often alluded to in the brief which places Justice Harrison in any other light than that of an honorable lawyer, faithfully attending to the interests of his client, and advising him according to his best judgment.”

Now see with what a miserable farrago that conclusion is supported.

At one point the nomination of Mr. Harrison for Associate Justice of the Supreme Court is represented as being the only fact charged as implicating him. This occurs in the following passage (see the Appendix p. 24):

“ But it happened that a few weeks before the said 6th of September, Justice Harrison had been nominated ; * * and upon this circumstance respondent Philbrook has built up in his imagination a gigantic conspiracy,” etc.

A little further on a long farrago, a small part of which is true, and the rest not only false but designedly false, is alleged against the brief, and the whole confused medley is then called “ this imaginary state of facts founded on no evidence.” The passage here referred to is that occupying the foot of p. 24 and the top of p. 25 of the Appendix. Of the charges against the brief included in that farrago, and called “ this imaginary state of facts founded on no evidence,” one is that the brief states the fact of Mr. Harrison’s nomination as candidate for Associate Justice of the Supreme Court ; another, that he drew up and witnessed the papers of the secret sale. Are those facts “ imaginary ” ? Other charges in that particular farrago are that the brief argued that Mr. Harrison “ was practically sure of election,” that “ any Superior Judge * * would be deterred from doing right,” and that “ the other Justices of this Court would be swerved from their duty.” All those charges are false and designedly false. It was no part of the argument that he “ was practically sure of election ” or that “ any Superior Judge would be deferred from doing right ” or that “ the other Justices of this Court would be swerved

from their duty "; all this may be seen in the comparison of the case with that of *Egerton vs. Earl Brownlow* which was given in the brief, and is shown on pages 79-96 above. In that case neither the boy, Lord Alford, nor his heir was "practically sure" to grow to manhood and succeed to the estate left by the will, nor would the English sovereign "be deterred from doing right," nor would he and his ministers be "swerved from their duty." It was enough that the contingency that Lord Alford might grow to manhood and come into that property, or that he might have an heir who would do so, was foreseen and provided for, and that if he should do so, or if his heir should do so, and should request to be made duke or marquis of Bridgewater, the fact of his official and social connection (or that of his heir, as the case might be) with the sovereign and his ministers and the probable loss of the estate that would ensue to him (or to his heir) if he should be refused, would be an "embarrassment," a "pressure" tending to influence the sovereign and his ministers improperly to grant the desired dignity. As in the case here, the argument of the brief was that in contriving the secret sale and secretly putting the papers in the handwriting of the candidate Ralph C. Harrison, and having then signed by him as the sole witness, the contingency that he was likely to become within a few months one of the Associate Justices of the Supreme Court of the State, was foreseen and provided for ; and that, if the contingency should happen, then the fact of his official and social connection with the other Justices and in the government of the State, and the injury that would ensue to him if his transaction should be adjudged fraudulent, would be an

"embarrassment," a "pressure" tending naturally to influence the Courts improperly to uphold the transaction. And the secrecy of the transaction and all the peculiar circumstances stated above were pointed out as proving that it was in fact contrived for that very purpose. The secrecy of the transaction showed the sense of guilt. The holding it in reserve until the efforts to subdue the deceased partner's family by depriving them of money had failed, also showed the sense of guilt.

To show that such was the corrupt and wicked purpose of the contrivance, the brief also pointed to the contention which the Newmans' attorneys, Justice Harrison's confederates, had made in the Superior Court, that the transaction could be set aside only on the ground of fraud (a contention expressly upheld by the trial Judge—See the Appendix pp. 3-4) and that it was Justice Harrison's transaction. The brief also called attention to the outcry of E. R. Taylor, a crony of Justice Harrison and one of the Newmans' attorneys that "It is in Judge Harrison's handwriting!" And the brief also showed that the Newmans' attorneys, Justice Harrison's confederates, had already begun their same corrupting tactics in the Supreme Court.

The case was clear. The proof was full. The secret sale was clearly a contrivance to influence the courts corruptly, and was from the time when it was contrived and ever afterward unlawful on that ground. The Justices who took part in the disbarment then well knew, as they have ever since known, that such was the contrivance, and that the secret sale was for that reason unlawful. It was a case in which justice plainly demanded the disbarment of the confederates, Ralph C.

Harrison, J. B. Reinstein, M. S. Eisner and E. R. Taylor—a demand which justice has ever since made and is still making with ever increasing emphasis. If the Justices (besides Harrison) had been honest men and free from the domination of The Southern Pacific Company, a great decision like that of the case of *Egerton vs. Earl Brownlow* would have been made and the four confederates last named would have been cited for disbarment. But Justice Harrison was the tool and favorite of The Southern Pacific Company. All the other Justices were the creatures of The Southern Pacific Company. As the editorials in *The Evening Post* and *The Record-Union* show, The Southern Pacific Company commanded that the corrupt transaction was to be upheld, that Justice Harrison and his confederates were to be upheld, and that the attorney who, on behalf of the three defenseless women, his clients, had exposed the villainy, was to be disbarred as a “punishment” for so doing, and to be held up forever in the name and by the authority of the State as a criminal, and to be relieved of the “punishment” only upon condition of making a public false declaration upholding the villainy which he had exposed, and declaring the great crime committed upon him to be just and proper. The Justices obeyed their owners, The Southern Pacific Company. The farrago with which, in the judgment of disbarment, they have sought to obey the orders of The Southern Pacific Company is but a tissue of designed and self-evident falsehoods.

Let it be noted that the designed falsehood of the judgment of disbarment that the brief argued that “the other Justices of this Court would be swerved from their duty” (a falsehood just pointed out) was

also copied direct from *The Record-Union*. It appeared in *The Record-Union* editorial of Dec. the 13th (see the Appendix p. 10), and was twice asserted and with great emphasis in that published on Dec. the 20th (Id. p. 19).

The assertion in the disbarment judgment that there was no evidence of any wrong doing by Ralph C. Harrison was also taken from *The Record-Union*. (See for instance p. 20 of the Appendix).

Throughout the judgment of disbarment, both in the part signed by five Justices, and in that written specially by Wm. H. Beatty, the Chief Justice, the facts are carefully suppressed and kept out of sight.

The *secrecy* of the transaction, of the secret sale, is carefully suppressed. The pains that were so long taken to keep it secret, all this is also carefully kept out of sight.

The promise of Ralph C. Harrison that no step should be taken without notice, and his use of that promise as an additional cloak for the secrecy, are carefully kept out of sight.

The long and cunning effort to subdue Mrs. Levinson and her daughters by withholding from them their means of living—and that such a measure was adopted and pursued upon Ralph C. Harrison's advice—is all carefully suppressed.

The effort of Ralph C. Harrison and the Newmans in July, 1890, to obtain secretly from the Probate Court an order authorizing such a transfer, and the false pretense then made by them to the Court that *all the assets, including the good will of the business*, had been valued and accounted for, and the refusal of the Probate Court to make any such order—all this is carefully kept out of sight.

The fact that the secret sale was made for a sum less by \$593.18 than the "balance sheet" of the Newmans showed to be the value of the interest, is carefully suppressed.

The declaration of the executor (see p. 49 above) that "throughout the administration of the estate he had done just what his attorney had told him to do," is carefully suppressed.

The effort of Ralph C. Harrison in December, 1890, --after he had become Justice elect of the Supreme Court and fully three months *after the secret sale*--to induce the Probate Court to rule falsely that the good will of the business belonged to the Newmans, is carefully kept out of sight.

Let it be noted also that all the suppression of the facts of the case thus practiced in the judgment of disbarment was also copied from *The Record-Union*. The editorial of Dec. the 13th professed to give "a statement of the facts" (see the Appendix p. 10), and that of Dec. the 20th professes to give "the story" (Id. 18), and in that "statement of the facts" and also in that "story," all that suppression of the facts which show the guilt of the Associate Justice Ralph C. Harrison is cunningly practiced precisely as in the judgment of disbarment.

Another designed falsehood in the judgment of disbarment is the following: By means of the trickeries of *covert assumption* and *ignoratio elenchi* (described on pages 147-154 above) Mrs. Levinson and her daughters are represented as having agreed to the Newmans' inventory and appraisement in every particular except that of the omission of the good will of the business.

See, for instance, the following language (Appendix p. 24):

* * "it appears that Philbrook thought that the estate was entitled to a share of the 'good will' of the said firm, while Justice Harrison was of the opinion that under the said articles of copartnership the estate of Levinson had no interest in the good will, but was entitled only to its share of the partnership property, to be ascertained as provided in said articles. It is clear that this was the only point of difference existing at the time of said settlement," etc.

See now the infamous trickery of *ignoratio elenchi* in this passage. The fact was—and it was clearly and emphatically pointed out in the brief—that we had announced that we would not accept the Newmans' inventory and appraisal *at all*; and in pointing to the omission to account for the good will of the firm's business, *we had only begun to state our specific objections*. We had not passed that first item; we had rejected the whole inventory and appraisal *in toto*, and, in beginning to state the specific objections, had mentioned *first of all*, an important item the omission of which was confessed. And precisely as a juggler covers his tricks by holding up to the spectators some object to divert their attention, so do these corrupt judges take a dishonest advantage of the fact that Mrs. Levinson and her daughters, in beginning to specify their objections to the Newmans' inventory and appraisal, had only mentioned as a first item the omission of the good will, and holding that out as "the only point of difference," play the trickery of falsely and dishonestly representing the Newmans' inventory and appraisal as having been agreed to in all other particulars. How truly do the logicians compare (see pp. 149-150 above) the trick called *ignoratio elenchi* to the tricks of "an expert juggler."

Let it be noted that the designed falsehood of the judgment of disbarment that Mrs. Levinson and her daughters had agreed upon the Newmans' inventory and appraisement in every particular except that of the omission of the good will of the business—together with the trickery, just described, with which it is there supported—was taken direct from *The Record-Union*. It was urged emphatically in the editorial published on Dec. the 20th (see the Appendix, p. 18).

Another self-evident falsehood in the passage of the disbarment judgment last quoted is the false pretense expressed by the trick of *covert assumption*, that the good will of the firm's business was not partnership property. See the words, "had no interest in the good will, but was entitled only to its share of the partnership property." The utter falsehood of such a pretence is shown on pages 103-105 above.

Another designed and self-evident falsehood of the judgment of disbarment is the designedly false pretense that Justice Harrison was attorney for the executor only, and not for Mrs. Fanny Levinson and her daughters. This particular falsehood may be seen in the passage quoted on p. 159 above and also on pages 23, 24 and 29, 30 of the Appendix. It is plainly an effort to represent Justice Harrison as having held no relation of trust for Mrs. Levinson and her daughters, an effort to shield him by shifting the field of inquiry to a false position more favorable to him. The falsehood is perpetrated by means of the two tricks of *ignoratio elenchi* and *covert assumption* used in combination. There is the *ignoratio elenchi* of holding Justice Harrison up as attorney for the executor and representing his position as such as being something

different from that of attorney for Mrs. Levinson and her daughters, but avoiding carefully any statement of what the difference in the two positions would consist of. Notice the language—"he was the attorney of one Raveley, executor of John Levinson, deceased. * * Philbrook was the attorney for certain legatees of said Levinson" (see the Appendix pp. 23-24). And there is the *covert assumption* that the attorney of the executor held no relation of trust for Mrs. Levinson and her daughters, the owners of the property of whom the executor was the representative. Now all this part of the disbarment judgment is designed falsehood. Only a little before the disbarment judgment was made the very Justices who took part in it, made and placed in the Reports a decision (*Bergin vs. Haight* 99 Cal. 52) a decision expressly and emphatically laid before them in the very brief for which they were disbarring the attorney—a decision in which they themselves had laid it down as the law that

"An administrator acts as a trustee for the owners of the property, whether heirs or the assignees of heirs, and his attorney stands in the same confidential relation."

Let it be noted that the designed falsehood that Justice Ralph C. Harrison had been the attorney for the executor only, and not for Mrs. Levinson and her daughters—and along with it the trickery by which it is supported, as just pointed out—was copied into the judgment of disbarment from the editorials in *The Record-Union*. It was first set up in the editorial published on Dec. the 13th (see the Appendix p. 10), and was emphatically asserted no less than four times in that published on Dec. the 20th (Id. pp. 18, 19).

Another designed and self-evident falsehood of the judgment of disbarment is the pretense, constructed by the combination of the two tricks of *ignoratio elenchi* and *covert assumption*, and for the plainly evident purpose of whitewashing Justice Harrison, the falsehood that all that Justice Harrison did was "to advise his client—the executor." (See the Appendix pp. 24, 33). To make out the falsehood, a great part of what Justice Harrison *did* is studiously suppressed, and there is the *covert assumption* that merely to give "advice" entails no liability. How differently the law is meted out to the poor and lowly! In the *Anarchists' Case* (*Spiess vs. The People* 122 Ill. 1) men were hanged for merely giving *advice*—advice resulting in murder. The Court there said:

"If he set in motion the physical power of another he is liable for the result. * * If he gave directions vaguely and incautiously, and the person receiving them acted according to what he might have foreseen would be the understanding, he is responsible."

Let it be noted, too, that the falsehood in the judgment of disbarment that all that Mr. Harrison was accused of was "advising" the executor "his client," and also the *covert assumption* that mere *advice* entails no liability, was all taken from *The Record-Union*. (See the editorial published on December the 20th, Appendix p. 18).

In the part of the disbarment judgment written specially by Wm. H. Beatty, the Chief Justice, the facts are treated in the same way, but with more detail. Here the facts of the case are with brutal falsehood and

dishonesty suppressed and the trickery of *covert assumption* freely practiced. Here the falsehoods and trickeries are practiced with far less self-control, far less disguise, and with far the more insolence.

On pages 141-142 above, attention is called to the coarse and extreme insolence with which the argument of the brief is dishonestly misrepresented in this particular part of the disbarment judgment. Can anything be more insolently dishonest than the [passage shown at the top of p. 142 above?

Here, too, there is the same effort, by means of the same tricks of *ignoratio elenchi* and *covert assumption*, to represent Justice Harrison as having been the attorney for the executor only, *i. e.*, as having occupied no position of trust or confidence for Mrs. Levinson and her daughters. (See the Appendix pp. 30-33). And for the same purpose of shielding Justice Harrison, this same falsehood was afterwards diligently urged, and in the same way, by Wm. H. Beatty, the Chief Justice, in the final decision of the case in which the brief was filed (Id. pp. 62, 63, 64, 65).

Here, too, there is the same effort, dishonestly suppressing the facts, to represent Justice Harrison's conduct as only *legal advice* to the executor (Id. p. 33). And, brutally and insolently taking sides with the two Newmans, he adds—"I see nothing in the case to justify the conclusion that the advice * * was not entirely proper." (Id.)

Here, too, there is the same infamous falsehood, built up with the same tricks, that Mrs. Levinson and her daughters had agreed to the Newmans' inventory and appraisement in all particulars except that of the omission of the good will of the business (See the Appen-

dix p. 33). And for the same purpose of shielding Justice Harrison, Wm. H. Beatty, the Chief Justice, afterwards set up, by means of the same tricks, the same falsehood in the final decision of the case for the two Newmans (Id. pp. 62-3).

To shield Justice Harrison, Wm. H. Beatty, the Chief Justice, also tries, in his special part of the disbarment judgment, to make out that it was only Justice Harrison's "opinion" that was in question, that the question was whether "Justice Harrison's opinion was less honest or less sound than that of Mr. Philbrook" (Id. p. 33). To make this out he deliberately suppresses the great fact that, as a means of robbing and oppressing them, Mrs. Levinson and her daughters were so long deprived, upon Justice Harrison's advice, of their means of livelihood, and also the fact of their efforts to escape from that siege of penury by obtaining a peaceful compromise. In addition, he sets up, by means of *covert assumption*, the insolent, brutal falsehood that, except for the articles of partnership, everything would have belonged to the two Newmans. See the following words shown on p. 33 of the Appendix: "On the contrary, they [Mrs. Levinson and her daughters] were then and ever afterwards asserting their validity [the validity of the partnership articles] and claiming under them." The fact is, as Wm. H. Beatty, the Chief Justice, well knew when he wrote those words, that neither Mrs. Levinson nor either of her daughters ever asserted the validity of the partnership articles or claimed under them. And it is also the plainly evident fact, as he then well knew, that by no possibility could the validity of the partnership articles be of any benefit to Mrs. Levinson or to either of her daughters.

It was the two Newmans and they only who were asserting the validity of the partnership articles and claiming under them, and it was they and they only that could be benefited by such an assertion or by such a claim. And, as may be seen from his own words, shown on pp. 33-34 and 61-75 of the Appendix, all this was well understood by Wm. H. Beatty, the Chief Justice.

Take a final example, an example which should be placed side by side with one which has already been pointed out. On pages 176-177 above it is shown that in order to exhibit me falsely as confessing in substance that the brief *threatened* and *menaced* the Court, and that I ought to be disbarred, Wm. H. Beatty, the Chief Justice, not only took base advantage of my oral words uttered at a time when I was struggling alone against a crowd of persecutors who were insolently using upon me the whole power of the State, not only took base advantage of my oral words, but, by deliberate lying, changed my words, "a member of the bar for whom *I have the greatest respect*" into "a brother attorney *in whom he had confidence.*" In the same spirit and in the same way he supports his declaration that Justice Harrison's "advice given to the executor as to the construction of the partnership agreement and his duty to settle according to such construction" was "entirely proper,"--he supports that assertion with the deliberately designed falsehood that *such also was the argument of my brief.*

The passage here referred to should also be compared with one in the part of the disbarment judgment signed by five Justices. There its authors, while openly taking sides with the two Newmans, use more self control,

and keep to generalities, saying (See the Appendix, p. 24):

* * "There were articles of co-partnership of the said firm of Newman & Levinson, existing and in force at the time of the death of Levinson, which provided, or at least purported to provide, for the disposition of the interest in the firm property and business of either partner upon his death."

And let it be noted, in passing, that the false assertion in the judgment of disbarment, ignoring the evidence (see pp. 17-20 above),—the false assertion that "There were articles of copartnership," etc., "which provided, or at least purported to provide for the disposition," etc. (the passage just quoted), was copied direct from the editorial published in *The Record-Union* on Dec. the 20th (see the Appendix, p. 18). Let it be noted, too, that the word "provided" and the phrase "at least purported to provide," used in the passage last quoted, mean precisely the same thing.

Wm. H. Beatty, the Chief Justice, handles the same point with the same malevolence, with equal cunning, but with greater boldness. After trying to make out that it was only Justice Harrison's "opinion" that was in question, and declaring that he sees "nothing in the case to justify the conclusion that the advice given [by Justice Harrison] to the executor as to the construction of the partnership agreement and his duty to settle according to such construction was not entirely proper" (Appendix, p. 33), he attempts to support his assertion by the deliberate and stupendous lie that the brief also argued that such was the effect of the articles of partnership. This he does in the following words (Id. pp. 33-4):

* * "Mr. Philbrook, indeed, is not entirely consistent with himself in this matter, for, unless I have misappre-

hended his position, he is now claiming that the Newmans, by the exercise of undue influence, induced their dying and partially demented partner to execute an agreement which sacrificed his interest in the good will; and, if this is so, it is scarcely consistent to claim that Judge Harrison misconstrued it, or that he can be blamed for the advice given to the executor at a time when neither Mr. Philbrook nor any one else had ever suggested fraud or undue influence in the procurement of the agreement."

That declaration of Wm. H. Beatty, the Chief Justice, concerning the argument of the brief, is a deliberately designed falsehood. The brief is still on file in the Supreme Court of California as one of the exhibits filed with my answer to the citation. There the brief may still be seen. One whole division of it (division IX, extending from p. 126 to p. 151) is devoted to showing fully, elaborately and emphatically that, although the Newmans had prepared the articles of partnership as a means by which to take advantage of their helpless partner, and under color of which to claim the right to take at his death his interest in the firm, yet, that the very language of those articles not only failed to "sacrifice his interest in the good will," but gave the Newmans no right whatever to take the whole or any part of his interest in the firm. And although the authors of the disbarment, when they made the disbarment, struck the brief from the files of the suit in support of which it had been prepared and filed, yet all the part of it containing the argument here stated was soon after filed again by Mr. Ira P. Rankin, the special administrator, as his brief. And that the brief not only contained that argument, but that the argument was correct, is confessed by Wm. H. Beatty, the Chief Justice, in his final decision for the two Newmans (see the Appendix, pp. 61, 64, 67-70, 72-73, 74).

The deliberate design with which Wm. H. Beatty, the Chief Justice, contrived the falsehood in the passage last quoted, may be still further seen in the studied cunning of his language. For instance, he says, "unless I have misapprehended his position." That cunning expression both added power to the falsehood by pretending a wish to be fair and opened a road by which he could retreat if he should find it necessary to do so. In fact, he could not have honestly misapprehended the position, and the plainly evident malevolence of his entire concurring opinion, as well as his language in the final decision (shown on pp. 61, 64, 67-70, 72-73, 74, of the Appendix) proves that he did not misunderstand it. Then, too, he says (in the passage last quoted) "he is now claiming that," etc. He cunningly avoids saying *expressly* that he refers to the claim *made in the brief*. But his language plainly does refer to the brief and can not be understood as referring to anything else.

The particulars above-mentioned are but examples. They only illustrate the treatment to which the facts of the case are subjected throughout the judgment of disbarment. It is impossible to give, within the limits of this paper, a complete list of all the particulars. And the foundation of this whole feature of the disbarment judgment was published in advance by The Southern Pacific Company on Dec. 13, 1894, and again seven days later, in editorials in *The Record-Union* (See Appendix, pp. 10-15 and 16-21.)

Those editorials in *The Record-Union* were transferred to and made to constitute the judgment of dis-

barment and were continued thence and reappear as the final decision of the case for the two Newmans, shown on pages 51-75 of the Appendix.

19. The Guilt of Justice Harrison and His Confederates Confessed. His Defenders Driven from the Field.

The sole owners of the interest of the deceased partner, John Levinson, in the firm of Newman & Levinson are Mrs. Fanny Levinson and her two daughters, Julia and Ada. The executor was but "a trustee and agent for the owners of the property [Mrs. Levinson and her daughters] * * and his attorney [Ralph C. Harrison] stands in the same confidential relation." This is not only self-evidently true, but, as just shown, was, only a little before the brief was filed, expressly so declared by the authors of the disbarment.

And, therefore, the effort so studiously made by The Southern Pacific Company in *The Record-Union* and in the judgment of disbarment, and also in the final decision of the case afterward made for the two Newmans--the laborious effort falsely to represent Justice Harrison as having been attorney for the executor only, and not for Mrs. Levinson and her daughters, as having held no relation of trust or confidence with Mrs. Levinson and her daughters, the false pretense that he was under no duty to protect them--all such falsely placing of Justice Harrison in a position which would exhibit his conduct in a more favorable light, is a clear confession of his treachery and guilt. Clearly and indisputably it shows a sense that in the position which he actually held his conduct cannot be defended. In

their efforts to defend him, his masters, The Southern Pacific Company, and his associates, the other Justices of the Court, are, as they themselves confess, driven from the field.

So, also, in suppressing the facts of the case as they have done, in studiously trying to keep the facts of the case out of sight, in so doing the authors of the editorials in *The Record-Union* and of the disbarment and of the final decision for the Newmans, confess clearly that, in their defense of their associate, the Justice Ralph C. Harrison, they cannot face the facts. In their efforts to defend him they are driven from the field.

So, also, in the whole disbarment proceeding and throughout the judgment of disbarment, in all its malevolence and trickeries and falsehoods, in all its outrage and cruelty, it is all a confession that Justice Harrison's conduct cannot be honestly defended.

So, also, in the denial to Mrs. Levinson and her daughters of the fundamental right of a hearing of the case, and, after denying a hearing, the decision of the case for the two Newmans upon grounds reeking throughout with perfidy and contrived falsehood, it is all a confession that Justice Harrison's conduct cannot be fairly defended, that in their efforts to defend him, his masters, The Southern Pacific Company, and his associates, the other Justices, are driven from the field.

So, also, in relentlessly holding upon the attorney the false and wicked disbarment—which has now been kept up for almost five years—as a means of forcing the attorney for Mrs. Levinson and her daughters to file in the court a false declaration that the case against Justice Harrison is an “imaginary state of facts founded

on no evidence"—it is a confession that he cannot be defended by fair means.

And by such facts the Associate Justice, Ralph C. Harrison, confesses his own treachery and guilt, and in the confession has added and is adding to his crimes, for in everything which has been done to shield him it is he that has been prompting it and pulling the wires. To use the words of Thomas Carlyle :

“Scoundrel is scoundrel; that remains forever a fact, and there exists not in the earth *whitewash* that can make the scoundrel a friend of this universe.”

20. Examples Illustrating the Malicious Insolence Expressed in the Judgment of Disbarment.

An example of the spirit of wickedness in which the judgment of disbarment is written may be seen in an expression in the part signed by five Justices. The authors of the disbarment had found out from some private source that the unfaithful administrator who had been suspended for embezzlement and who upon being so suspended, had resigned—as stated on pages 55-59 above—had previously been taken by me into my law office and assisted by me, and afterwards, on my recommendation, appointed administrator. This fact the authors of the disbarment—unspeakable traitors themselves and full of fellow feeling for traitors—set out as an additional ground of the disbarment and as an insolent jeer at their victim. The passage where this occurs is the following (See the Appendix p. 26):

* * “ As respondent has, in the same connection, assailed not only all the members of this Court * * but also * * a special administrator who was appointed at his own instance and out of his own office, charity might possibly suggest that he is the victim of abnormal suspicion and distrust.”

Has it not often happened, from the very earliest times, for a man to be betrayed by a person whom he has befriended? Can such a misfortune be fairly set up as a ground for inflicting “ punishment ” upon the man who has been thus betrayed? Could malice or insolence go much further in assigning grounds for the disbarment?

Another display of the same spirit of wickedness may be seen in the malicious avowal that, although neither of the two Newmans was ostensibly a party to the proceeding in the Probate Court settling the suspended administrator’s account (stated on pp. 55-59 above), still it was they and their corrupt contrivance that had in fact brought wrong upon their deceased partner’s family in that proceeding. This occurs in the following passage (See the Appendix, p. 23):

* * “ and also the transcripts in two other appeals between the same parties, in which the Newmans were also successful in the trial court, are made part of the said Philbrook’s answer in this present proceeding.”

One of those “ two other appeals ” is the appeal of Mrs. Levinson and her daughters from the order of the Probate Court (stated on pp. 55-59 above) settling the suspended administrator’s account—a case in which neither of the Newmans was ostensibly a party, but where, as was indeed too true, it was their wicked agency that had there also cut off their dead partner’s

family from justice. In the passage last quoted, this fact is insolently avowed and made the subject of an insolent jeer.

Another example of the same display of wickedness may be seen in the insolent brag that the disbarment was inflicted because its authors had the victim in their power, because the victim is one of their "*own officers.*"

This occurs in the following passage (See the Appendix, p. 28):

* * "And when the punishment of such an offense is clearly within the jurisdiction of the Court, as in the case of one of its own officers; it must impose the penalty or neglect its imperative duty."

The plainly evident meaning is: "We are destroying you because such is the position we occupy and such the position that you occupy, that we have the physical ability to turn the power of the State of California upon you to your destruction."

The foregoing are, however, but examples of the extreme insolence and malice displayed throughout the judgment of disbarment, both in the part signed by five Justices and in that written specially by Wm. H. Beatty, the chief Justice. And all this characteristic feature of the disbarment was copied from the editorials published by The Southern Pacific Company on December the 13th and 20th (See the Appendix, pp. 10-15 and 16-21). And after the disbarment, precisely the same display of malice and insolence toward the victim was kept up in editorials published in *The Record-Union*. See particularly pages 34, 36-39, 41-43, 44 and 46 of the Appendix.

21. A Fable of Æsop.

Some of the features of the judgment of disbarment which have been pointed out may be easily recognized in the following fable of Æsop:

"THE WOLF AND THE LAMB.

"One hot sultry day a Wolf and a Lamb happened to come just at the same time to quench their thirst in the stream of a clear silver brook that ran tumbling down the side of a rocky mountain. The Wolf stood upon the higher ground, and the Lamb at some distance from him down the current. The Wolf, having a mind to pick a quarrel with him, asked him what he meant by disturbing the water and making it so muddy that he could not drink; and at the same time demanded satisfaction. The Lamb, frightened at this threatening charge, told him, in a tone as mild as possible, that, with humble submission, he could not conceive how that could be; since the water which he drank ran down from the Wolf to him, and therefore could not be disturbed so far up the stream. "Be that as it will," replies the Wolf, "You are a rascal; and I have been told that you treated me with ill language behind my back about a year ago." "Upon my word," says the Lamb, "the time you mention was before I was born." The Wolf, finding it to no purpose to argue any longer against truth, fell into a great passion, snarling and foaming at the mouth as if he had been mad; and, drawing nearer to the Lamb, "Sirrah," says he, "if it was not you, it was your father, and that is all one." So he seized the poor innocent helpless thing, tore it to pieces and made a meal of it."

22. The False Pretense of Wm. H. Beatty, the Chief Justice, That He Did Not Concur in All the Grounds.

Wm. H. Beatty, the Chief Justice, begins his concurring opinion as follows (See the Appendix p. 29):

"My views of the case differ in some particulars from those of my associates.

"It was not because of Mr. Philbrook's assault upon a member of this Court—gross and unjustifiable as I deemed it to be—that I joined in the order citing him to show cause. So far as that part of his offense was concerned I should have waited" etc.

He then devotes himself to the falsehood and trickery of pretending that the brief "threatened the other members of the Court," and then continues thus (Id. pp. 32-3):

"Upon the other branch of the case I should have had nothing to say if Mr. Philbrook had not, by devoting himself to that exclusively and ignoring everything else, challenged the judgment and opinion of the Court. Under the circumstances I cannot pass it over in silence without seeming to dissent from the views of my associates, and therefore," etc., etc.

And he then proceeds, with rankest dishonesty and trickery and falsehood, to whitewash the Associate Justice Ralph C. Harrison.

Those declarations of Wm. H. Beatty, the Chief Justice, that "My views of the case differ in some particulars from those of my associates," and that "It was not because of Mr. Philbrook's assault upon a member of this Court * * that I joined in the order citing him to show cause" and that "Upon the other branch of the case I should have had nothing to say if Mr. Philbrook had not, by devoting himself to that exclusively and ignoring everything else, challenged the judgment and opinion of the Court"—are a confession on his part that

he was sensible of the outrage of disbarring the attorney for showing for his clients the fraud and wickedness practiced against them by Ralph C. Harrison. But so far as pretending that he, Wm. H. Beatty, did not join in inflicting the disbarment upon that ground, or that he did not concur with his associates in disbarring the attorney for such a cause, those declarations are manifest and unmitigated falsehoods. He indeed betrays this fact in the very words he uses in making those declarations, for he there says, "So far as that part of his offense was concerned," "Upon the other branch of the case," and, "I cannot pass it over in silence without seeming to dissent from the views of my associates." He himself calls it "part of his offense," and a "branch of the case," and avows that he does *not* "dissent from the views of my associates." And his entire concurring opinion shows manifestly that he concurred with his associates on all the grounds, and that he in fact joined in inflicting the disbarment upon the sole actual ground that the attorney had exposed for his clients the outrageous fraud and treachery and wickedness of Ralph C. Harrison.

23. The Distinction Between the Two Parts of the Disbarment Judgment.

The distinctive differences between the part of the disbarment judgment signed by five Justices and that prepared specially by Wm. H. Beatty, the Chief Justice, are indicated in the foregoing review.

In the part signed by five Justices, there is the more self-control, the greater art of concealment, and, for this

purpose, the more skillful avoidance of details. Note, too, the peculiar way in which it is signed, the Justices signing in a bunch, so that it cannot be told what particular individual drew it up. This was evidently either because that part of the disbarment (which Wm. H. Beatty, the Chief Justice, calls "the opinion of the Court," see the Appendix, p. 31) was not in fact drawn up by any of those who signed it, but by some private employee of The Southern Pacific Company, or else it was so signed from a sense of guilt and with a wish to conceal the draughtsman.

In the part prepared by Wm. H. Beatty, the Chief Justice, there is, along with the same malevolence and studied cunning, the less self-control, the less skill at disguise, the more detail, the rougher workmanship. In the work of the Chief Justice we see self-conscious dishonesty upon dishonesty, trickery upon trickery, lie after lie, and insolence after insolence in far the more open and specific form. In all these particulars he stands in front of the others, like an index or table of contents, a chief in villainy and wickedness, in every quality characteristic of the foul, malicious, cruel, cowardly scoundrel.

A similar distinction will be seen between the two parts of the final decision of the case in which the brief was filed (shown on pages 51-75 of the Appendix), and is pointed out below. For Wm. H. Beatty, the Chief Justice, a lie has apparently the same fascination that the flame of a candle has for a moth; he cannot resist the temptation to run his head clear into it openly and plainly.

This peculiarity in the work of Wm. H. Beatty, the Chief Justice, has its value, and might well suggest a

chapter upon the comparative values of the various kinds of scoundrel. It furnishes the means for proving the crime more clearly and fully.

For instance, in the language of Wm. H. Beatty, the Chief Justice (shown on p. 32 of the Appendix), "Mr. Philbrook had not only been informed by a brother attorney of the offensive construction which might be put upon his brief, he had been notified at the opening of the proceedings by the argument of Mr. Hayne that such was the construction placed upon it by the committee of the Bar Association, and he was plainly informed from the bench that it was understood in the same way by the Court. If, in spite of these plain intimations" * *—in those words it is confessed both that he knew that the *citation* did not charge that the brief contained a *threat* or *menace*, and that he was aware of the outrage of inflicting the disbarment without a previous accusation of the grounds upon which it was to be made and a hearing. And that same confession is made in the same way in the editorial exploitation of those words of Wm. H. Beatty, the Chief Justice, in *The Record-Union* of Jan. the 14th. See the words of the editorial, "even after being told that the Court regarded his language as threatening, he refused to withdraw it." (Appendix, p. 40).

24. The Disbarment is the Work of The Southern Pacific Company.

Let the reader now compare the judgment of disbarment—compare its features pointed out in detail in the foregoing review, its dishonest suppressions of the facts

relating to the fraud, treachery, oppression and corrupt practice of Ralph C. Harrison, its peculiar and designed falsehoods about the facts, its peculiar and designed misrepresentation of the argument of the brief, its peculiar and vindictive falsehoods about the law, its insolent trampling down of every principle of natural justice and every guaranty of the Constitution and the law applicable to the case, its peculiar and malevolent trickeries and sophistries, its peculiar terms and phrases and tricks of expression, and the spirit of falsehood and outrage and malice and wickedness manifest throughout, and its plainly evident motive—compare all those numerous and strongly marked features, as well as the act as a whole, with the same identical features in the articles which were previously published by The Southern Pacific Company in *The Evening Post* and *The Record-Union*, articles which are referred to in the foregoing review and are shown in full in the Appendix.

Let it be borne in mind that in no other newspaper did anything of the kind appear—in no other newspaper did there appear so much as a single item of any of those peculiar features which appear in the judgment of disbarment.

In Chapter VII below, an account is given of an attempted trial in January, 1898, in the United States Circuit Court at San Francisco, of a suit brought by me to recover damages for the disbarment. In preparing for that trial I had carefully concealed any disclosure or intimation that I had discovered the agency of The Southern Pacific Company in the disbarment,

and by so doing was able to subpœna and bring into Court Wm. H. Mills himself and with him all the editorial writers of *The Record-Union*, and, among them, one Joseph A. Woodson of Sacramento. When they appeared there, Wm. H. Mills came up to me and with all his extreme smoothness, as if brim full of—to use again the words of Burke—"the sentimental delicacies of bribery and corruption," he requested me to excuse as many of his editors as I could because their enforced absence from Sacramento would cripple the paper. He then brought up and introduced Joseph A. Woodson, a pallid-faced, watery-eyed, nervously unstrung person of about 54 years of age, and told me in his presence that it was that Joseph A. Woodson who had written all those editorials in *The Record-Union*, and he said also that many years previously Woodson was himself a practicing lawyer. To all this statement Woodson then assented.

Suppose, then, that it was Joseph A. Woodson of Sacramento, employee of The Southern Pacific Company on *The Record-Union*, that wrote those editorials. It is then extremely probable that Woodson wrote also all that part of the disbarment judgment which was signed by five Justices, the part which Wm. H. Beatty, the Chief Justice, calls "the opinion of the Court (See the Appendix p. 31) and also the citation.

In the first place, it is the same individual *mind* that appears both in the editorials and in the judgment of disbarment. In both it is the *mind* of one who, though glib with language, has only a smattering of law and is without conception of its principles. For instance (as pointed out on p. 262 above), it is only in the part written specially by Wm. H. Beatty, the Chief Justice,

that there appears a consciousness that the victim ought to have been given a hearing; and (as pointed on pp. 259-60 above), it is only in that part that there appears a sense of the outrage of making the pretense that Justice Harrison was not guilty of the fraud, a ground of the disbarment. And, as that infamously lying ~~man~~ pretense was the only real ground of the disbarment, that confession of Wm. H. Beatty, the Chief Justice, together with his confession that the victim ought to have had a hearing upon the pretended grounds, and his infamous efforts to falsely represent the victim as admitting the justice of the disbarment—makes his whole concurring opinion a declaration that the act in which he was joining was a great crime, and that he felt it to be such. And both in the editorials and the disbarment judgment (the part signed by five Justices) the temper manifested is that of a pallid, nervously unstrung, ill-natured underling, about Woodson's age. The difference between the editorials and the judgment is precisely that and only that which would result from the effort that the editorial writer would naturally make to adopt a more judicial tone when formulating his editorials into a judgment of the Court.

Again, the same identical tricks of expression that appear in the editorials reappear in the judgment of disbarment; and the correspondence is so minute that it is incredible that it happened otherwise than from the hand of the same workman. For instance, in the editorial in *The Record-Union* on Dec. the 13th there is the trick of expression, "so grievous an offense" (see the Appendix, p. 10); and in the disbarment judgment there is the same trick of expression, only

toned down a little, in the words "no graver offense" (Id. p. 27). In the editorials there are many such expressions as "maintain its dignity, because it is the final tribunal of the people" (Id. p. 14), and these reappear in the judgment of disbarment in the expression, "sense of his duty to the people to preserve the due dignity of their courts" (Id. p. 27), so, too, the idiotic contradiction in terms, "outrageous verbal assaults" in the judgment of disbarment, appeared first in *The Record-Union* as an "outrageous assault" (Id. p. 10) and in *The Evening Post* as "wordy bludgeons" (Id. p. 21). So, too, the false terms, menace, threat, assault, assails, offense, offender, punishment, penalty, privileges—terms and tricks of expression in the judgment of disbarment (all of them falsely used there), all appear first in the editorials. On pp. 208-9 above, some of the peculiar tricks of expression falsely belittling the position of an attorney, which appear in the judgment of disbarment, are shown to have appeared beforehand in *those precise words* in the editorials. And those expressions falsely belittling with petty malice the position of an attorney are precisely such as would come naturally from a broken-down, unsuccessful attorney, reduced to an editorial flunkey of The Southern Pacific Company, and so old as both to have abandoned hope of success in the profession of the law, and to feel bitter at having failed at it—an age which would be about that of Woodson. The peculiar and strongly marked tricks of expression in which the judgment of disbarment corresponds strictly with the editorials could be greatly extended. Those which are here mentioned are only a small part of those pointed out in detail in preceding pages.

On page 125 above it is stated that six of the new accusations did not appear beforehand in *The Record-Union*. That statement is, however, erroneous. The new charge that "it [the brief] also contains language highly reprehensible concerning the learned Judge of the Superior Court," etc., was also made beforehand in the editorial of December the 13th (see the Appendix, p. 11). And that new accusation that "Philbrook bitterly assails the Superior Court in this same offensive brief," displays the *intention* which discovered all of those six new accusations and placed them in the judgment of disbarment.

Again, the judgment of disbarment was produced in a hurry, so as to be signed by the two Justices whose terms were expiring, and thus to avoid any re-argument; for a re-argument would have only set the newspapers talking more of the fraud of Justice Harrison. The season, too, was that of Christmas and the New Year, a time more than usually occupied with social diversions. In managing the disbarment proceeding and in writing the judgment, Woodson would naturally feel, and would naturally have been told, that the reason why he was brought from Sacramento and assigned to the task was that the Justices and the better lawyers of The Southern Pacific Company were at that time unusually busy with other matters. How naturally, then, would come from *him* the words of the disbarment judgment (see the Appendix, p. 28): "It would have been much more agreeable for us to have devoted the time to its hearing to other business." But, as coming from the Justices, those words seem exceedingly strange.

Again, there is the peculiar way in which the disbarment judgment is signed, the Justices signing in a

bunch. I am not aware that any other decision or judgment of the Court was ever signed in such a way. The way in which it is signed strongly suggests that it was written by an outsider, by a person unfamiliar with the practice of the Court, and taken around to and signed by the Justices and then filed. The shortness of the time within which it was done, the press of other matters, and the arrogant sense of their power over their victim, naturally made the authors of the disbarment careless of the usual forms.

The fact of the separate concurring opinion of Wm. H. Beatty, the Chief Justice—and the peculiar fact that, although a concurring opinion, it lays down (as above shown) precisely the same grounds as that which it calls the “opinion of the Court”—fortifies the probability that the “opinion of the Court” was written by Woodson. How natural for the leaders of The Southern Pacific Company, knowing Woodson to have been many years out of practice as a lawyer, and a tyro in such work—how natural for them to feel some distrust of a judgment written by him, and, because of such distrust, to order William H. Beatty, the Chief Justice, to write a separate concurring opinion. And the concurring opinion of Wm. H. Beatty, the Chief Justice, has all the earmarks of having been prepared, not of his own will, but in obedience to just such an order; for all that he did was to take the part signed by five Justices and try to recast and expand it—with the result (as already pointed out) of only exhibiting its vices in a more lurid light.

Shortly after the disbarment was made, I interviewed three of the Justices, McFarland, Fitzgerald and De Haven, and asked each of them separately to tell me

who prepared the disbarment judgment. Every one of them refused to tell. Now, why should they refuse? They had all signed it; every one had made himself responsible for it. Their refusal to tell who prepared it points also to the fact that it was prepared by some person not a member of the Court.

Take now the citation (shown on pp. 4-6 of the Appendix). The citation is signed by the Justices in a bunch. And while the signatures of four Justices would have been fully as good as the signatures of all—a fact well known to all persons familiar with the practice of the Court—it was signed by six Justices, by all except Harrison. Then, too, although Wm. H. Beatty, the Chief Justice, signed first, yet the language of his concurring opinion indicates that he did not prepare the citation, but only “joined in” (see the Appendix, p. 29). True, if he had said, by direct assertion, that he did not prepare the citation, that might well be taken as proof that he did prepare it. He does not, however, say it directly, but apparently only by an incidental expression; and it is possible that he may tell the truth when off his guard. It was then brought to him to “join in” upon and was then taken around also to five others and they, too, made to “join in.” And it is precisely the lawyer long out of practice, Woodson, brought from Sacramento, acting under orders to have the whole six “join in”—it is precisely such a person who might with the best face demand the six signatures. And his credentials from The Southern Pacific Company would naturally ensure obedience. And, as is extremely probable, he afterwards took around the disbarment judgment and had five of the Justices again “join in” by signing, and deliv-

ered to Wm. H. Beatty, the Chief Justice, the order to write a concurring opinion.

In the news article published in *The Evening Post* on Dec. 7, 1894—the day when the citation was signed—the hand of the writer of the editorials in *The Record-Union* (*i. e.*, the hand of Woodson) is apparent. Take the expressions “Philbrook’s Fix,” “A Most Abject Apology,” “attack upon the Supreme Court in general and Justice Harrison in particular has landed him in a peck of trouble,” etc. Those expressions are the same in kind as those which afterward appeared in the editorials in *The Record-Union*. It is probable, then, that Woodson was in San Francisco on the day when the citation was signed, and, after having it signed, wrote the news article for *The Evening Post*.

On the other hand, the editorials in *The Evening Post*, although using the same peculiar words, already specified, as those which appear in *The Record-Union* and in the judgment, are written in a very different style, a smooth, oily style. Evidently the editorials in *The Evening Post* were not written by Woodson, but by his superior. And I have been told by good authority that the style of those editorials in *The Evening Post* is that of Wm. H. Mills, Woodson’s superior.

Again, the editorials in *The Record-Union* (written by Woodson) show a careful examination and close study of the brief and of the records relating to the case; and all the briefs filed and the records relating to the case were in San Francisco. It is, then, reasonable to suppose that Woodson was brought to San Francisco for the purposes of the disbarment. And this conclusion is much fortified by the extraordinary fullness and energy with which *The Record-Union* was

used in the disbarment. As already mentioned, the editorial published on Dec. the 13th occupied almost the entire editorial part of the paper, and that published on Dec. the 30th occupied its entire editorial side.

Shortly after the disbarment was made an acquaintance of Woodson told me that throughout the mock hearing of the citation (on Dec. the 17th and the 18th) Woodson was in San Francisco and present in the court room, and that he appeared to be taking great interest in the case, and the editorial in *The Record-Union* on Dec. the 20th professes to have been written by a person who was present at the hearing of the citation (see the Appendix p. 17).

As already shown, the argument delivered by Robert Y. Hayne at the mock hearing of the citation was only that of the editorial written by Woodson and published four days previously in *The Record-Union*. And, as has also been pointed out, the idea of bringing in a "committee from the Bar Association of San Francisco" to bolster the crime, may be seen in the news article in *The Evening Post* of Dec. 7, 1894, an article evidently written by Woodson. Base as was the work done by Woodson, still it is evident that Robert Y. Hayne and his "committee from the Bar Association of San Francisco" were but puppets moved through Woodson. Hayne knew at the time that he was being used as such puppet, and willingly allowed himself to be put to such use. And he received his reward by being assigned to the injunction suit against the Railroad Commissioners and given \$10,000 from the State, as already mentioned (pp. 64-75 above).

Again, there is the progressive development of the crime that may be seen, beginning in the language used

in the citation, rising steadily through the newspaper articles of *The Evening Post* and *The Record-Union*, culminating in the disbarment judgment and emanating in the peculiar self-consciousness of crime shown in the concurring opinion of Wm. H. Beatty, the Chief Justice. In the citation all is nebulous—the only charge made is of “scandalous and contemptuous matters” (see the Appendix p. 5) without even so much as the pretense of specifying wherein the “scandal” or “contempt” consists. In the news article published in *The Evening Post* on the same day, there come the words, “attack upon the Supreme Court in general and Justice Harrison in particular,” and the suggestion for a “most abject apology” and a declaration that “Philbrook” is in a “fix.” In the editorial of Wm. H. Mills in the same paper there comes the next step in the words, “charging improper motives to one of the Justices, and threatening the Court by innuendo and insinuation” (see the Appendix p. 9). Then, rising higher, comes the vituperation of *The Record-Union*, the terms “outrageous assault,” “the Philbrook case,” “threatening,” “threatens,” “framed as threats,” “so grievous an offense,” “offender,” “punishment,” and next the formulation of those editorials into the judgment, and then the concurring opinion of Wm. H. Beatty, the Chief Justice, wherein he plainly shows that he feels keenly that the act in which he has been compelled to join is a great and most foul crime.

Now put the foregoing particulars together and view them as a whole. Here is the framework and outline of the whole disbarment case. The disbarment was ordered and made by The Southern Pacific Company. In choosing the particular agent for the particular

crime, they chose Woodson, brought him from Sacramento and assigned the task to him. In carrying out his task Woodson got what points he could from others. Some of the points, such as the striking out of the briefs in the case of *Warner vs. Dye Works*, were probably given him by Justice Harrison. The fact that the suspended administrator had been previously befriended by me in my law office, and had been appointed administrator on my recommendation, he probably learned through some private detective of The Southern Pacific Company. In part at least he was superintended and assisted by Wm. H. Mills. He was only the agent of The Southern Pacific Company; the power by which he accomplished his task was the ownership of the Justices by The Southern Pacific Company.

And now, laying aside the question of the extent to which any particular individual was used as an agent in the crime, let us return to the bare fact of the disbarment judgment and of the newspaper articles published in advance in *The Evening Post* and *The Record-Union*. Is it not manifest, is it not clear beyond any room for doubt, that the same *mind* that produced those newspaper articles—that that same *mind* and none other produced the judgment of disbarment? And since that mind was at work on the very day on which the disbarment proceeding was begun, is it not clear that same mind produced the disbarment proceeding? Is it not a natural and manifest impossibility that all those numerous and peculiar features of the disbarment judgment, all of them the work of falsehood and dishonesty and malevolence, could have been foreseen

with such accuracy, tallying in every particular with the utmost precision, and published in advance in those newspapers, without the whole having been the work of the same mind?

Compare also the motive and purpose manifest in those newspaper articles with the motive and purpose manifest in the disbarment judgment. It is one and the same motive and purpose. Both in the newspaper articles and in the disbarment judgment, the motive and purpose is to make a "Philbrook case." "The Philbrook contempt case, now before the Supreme Court of this State," "the story of the Philbrook case," to raise a false hue and cry against the attorney, who had so well exposed Justice Harrison, and thus to divert attention from the villainy of Justice Harrison. That is the very essence of the trick called *ignoratio elenchi* (described on pages 148-154 above), so freely used in the disbarment judgment. And both in the newspaper articles and in the disbarment, it is the manifest purpose and motive, under cover of such false and wicked hue and cry, to whitewash the Associate Justice Ralph C. Harrison, to support and give effect to his villainy, to wreak in his behalf a vindictive vengeance upon the attorney because of having exposed that villainy and to compel the attorney to withdraw the charge and declare it to be false.

And why were The Southern Pacific Company doing so much for Justice Ralph C. Harrison? The answer is in such acts as the mutilation of the record in *Heckman v. Swett* (stated on pp. 60-62 above) and the false decision of *Hunt v. Ward* and *Estate of Garcelon* (stated on pp. 62-64 and 64-75 above), evil deeds which he and the other Justices, his associates, were doing for

The Southern Pacific Company. It was also The Southern Pacific Company, through their agent, E. S. Pillsbury, that gave him his nomination and, by means of that nomination, his place as Associate Justice in the Court. He was their *protege*. And the other Justices also were, when elected, their candidates. This is stated and the evidence given on pages 31-33 and page 59 above.

The disbarment is, therefore, not in truth a judgment of the Supreme Court of California. On the contrary, it is an act which The Southern Pacific Company have committed, by means of their wrongful possession of the Court, and in order to support their evil agent, the Associate Justice Ralph C. Harrison. The Southern Pacific Company have no lawful or just right to be the Supreme Court of California.

25. The Southern Pacific Company Following Up and Clinching the Disbarment.

A party against whom a judgment of the Supreme Court of California is made is allowed, by the rules, to file within twenty days a petition for rehearing.

It was probably in part to head off any such relief, as well as to turn the force of public opinion, that the disbarment was followed up by other articles in *The Record-Union*, as follows :

On Jan. 8, 1895, *The Record-Union* published, with virulent and maliciously exulting headlines, all that part of the disbarment judgment signed by five Justices. This article is shown, in its regular order, in the Appendix p. 34.

This was followed up on Jan. 10, 1895, by a long and virulent editorial in the same paper. A copy of this editorial is shown in the Appendix (pp. 35-36).

This was followed up on Jan. 14, 1895, by a news article in the same paper, announcing the special concurrence of Wm. H. Beatty, the Chief Justice. A copy of this article is shown in the Appendix (pp. 36-39).

As will be seen upon comparison, *The Record-Union*, in the article last mentioned, falsely quoted a part of the opinion of the Chief Justice, and in such a way as to betray clearly the purpose of bringing in "the committee of the Bar Association" to bolster up the disbarment. In quoting the following passage in the opinion of the Chief Justice * * "he had been notified at the opening of the proceedings by the argument of Mr. Hayne that such was the construction placed upon it by the Bar Association," the article in *The Record-Union* changes the words "Bar Association" to "*legal profession*." (Compare the language falsely quoted in the editorial, as shown on p. 38 of the Appendix, with the words of the decision shown on p. 32 of the Appendix.) Here plainly is a confession that the purpose of supporting the disbarment proceeding by the trickery of a "committee of the Bar Association" was to make the public believe that it was supported by the *legal profession*—a purpose manifest even without such an indication.

Besides the article last mentioned there was also published on Jan. 14, 1895, another virulent editorial in *The Record-Union*. A copy of this article is shown in the Appendix (pp. 39, 40).

No other newspaper published the text of the disbar-

ment judgment or even of that part filed Jan. 5, 1895. No other newspaper contained any such articles.

Now, pray examine those four articles published in *The Record-Union* in January, 1895—compare them with the articles previously published in the same paper and with the language of the disbarment judgment. Do they not furnish further and overwhelming proof that the disbarment judgment was the work of The Southern Pacific Company?

26. The Denial of the Petition to Set Aside the Disbarment and be Allowed a Hearing.

On January 25, 1895, twenty days after the disbarment, I filed in the Supreme Court an elaborate printed petition, in the form of a petition for a rehearing and a motion for a new trial, and on Feb. 2, 1895, supported it in an oral address to all the Justices except Harrison. The petition, though expressed, as in the case of the Lamb in the fable, "in a tone as mild as possible" and "with humble submission," set forth in substance and clearly all the injustice and illegality of the disbarment judgment above stated, but did not mention that it was the work of The Southern Pacific Company, for of that fact I was at that time ignorant. On Feb. 2, 1895, I submitted the petition to all the Justices except Harrison, and, among the others, to the Associate Justices Frederick W. Henshaw and Jackson Temple, who had been elected in November, 1894, each for a term of twelve years, and had taken office on Jan. 7, 1895.

On Feb. 4, 1895, two days after the petition was so submitted, the Justices, setting at naught the dictates of natural justice and the express provisions of the Con-

stitution of California (Art. VI, Sec. 2) that "In the determination of causes, all decisions of the Court in bank or in departments shall be given in writing, and the grounds of the decision shall be stated," and stating no ground or reason whatever for their action, entered an order declaring the petition denied. That order was expressed in two words only, which were:

"Rehearing Denied."

27. The Bill in the Legislature. The Southern Pacific Company and the Newmans and J. B. Reinstein Following Up and Clinching the Disbarment.

From the beginning of January, 1895, to March 16, 1895, the Legislature of the State was in session in Sacramento. Finding the Court closed against me, I sought relief from the Legislature, and to that end prepared a bill and had it introduced in both the Assembly and the Senate on Feb. 14, 1895. The bill is shown on p. 41 of the Appendix.

While this bill was before the Legislature it was fiercely opposed by The Southern Pacific Company, through editorials in *The Record-Union* and by lobbyists and by printed circulars purporting to be from the Bar Association of San Francisco, a society of which E. R. Taylor, one of the Newmans' attorneys, was then president, and of which (as already mentioned) all the Justices of the Supreme Court and the principal attorneys of The Southern Pacific Company were members. J. B. Reinstein, another of the Newmans' attorneys, was detected among those secretly lobbying against the bill and was publicly exposed for so doing. An em-

ploye of the Newmans was zealously engaged in making trades with members of the Legislature for votes against the bill. With but a few exceptions, the lawyers in the Legislature refused to support the bill, some feigning objections to it and others speaking privately in favor of it, and frankly admitted that their refusal to support it openly was from fear of being persecuted and ruined if they should be known to have supported it. In the Assembly three attorneys (one of them the chairman of the judiciary committee) actively fought against the bill, and obtained an adverse report from the judiciary committee. By secret influences, the Senate was induced to refer the bill a second time to its judiciary committee, although that committee had reported the bill favorably. The press of the State, was, however, in general friendly to the bill. Against all opposition the bill was passed by the Senate on March the 7th, was then transferred to the Assembly, was passed by the Assembly on March the 13th, and a reconsideration defeated on March the 14th. This was so late in the session that the bill could not become a law without the approval of the Governor. The Governor (James H. Budd) had been elected in November, 1894; his candidacy had been supported by *The Record-Union*, though it professed to be an organ of the opposite party; one of his first official acts had been to appoint the editor of a newspaper organ of The Southern Pacific Company a State Harbor Commissioner at San Francisco, and he (the Governor) was the personal friend of J. B. Reinstein. He refused to approve the bill, but assigned no reason.

The contest made by The Southern Pacific Company to defeat the bill, both while it was before the Legisla-

ture and while it was in the hands of the Governor, is shown by the editorials which were then published in *The Record-Union*. While the bill was before the Legislature, those editorials were carefully timed so as to appear when the bill was either just coming to a vote or in some critical stage—a fact that can be readily verified by comparing the days on which the editorials appeared, with the published journals—and every time such an editorial appeared the paper was placed upon the desk of every member of the Legislature. The editorials are shown on pages 41–50 of the Appendix.

An example of the lies in those editorials—for they reek with lies from beginning to end—may be seen in that of March the 23rd, asking the Governor to refuse his approval, and saying that the “local contemporaries” of *The Record-Union* had opposed the bill in the Legislature. That statement is an utter falsehood. Except *The Record-Union*, no newspaper published in Sacramento opposed the bill.

An example of the unscrupulous trickeries in those editorials may be seen in the efforts to invoke against the attorney in whose destruction The Southern Pacific Company were engaged, the unpopularity of the anarchists, and particularly the odium held against them because of the murders at the Haymarket in Chicago. An example of that effort may be seen in the editorial published on March the 2nd (Appendix p. 43). A similar effort to turn against their victim the unpopularity of “radical socialists and chronic agitators” was made in the editorial published on January the 14th (Id. p. 39). In a less pronounced form the same effort was made before the disbarment in the editorial of December the 13th and that of December the 20th. (Id. pp. 14, 15,

16.) And it is also to be seen in the judgment of disbarment (Id. pp. 27, 31). Here were The Southern Pacific Company engaged in practices better exemplifying the motto "Down with the law!" than what was done by the anarchists of Chicago and of greater cruelty and more basely criminal, and trying to turn the unpopularity of the lesser law breakers against the victim of their own crime. See p. 112 above.

How utterly false was all that opposition to the bill, as disclosed in those editorials, may be seen by comparing their utterances, with what (as shown on pages 193-4 and 197-8 above) has always been the law throughout the United States and has been the law of England for the last four hundred years.

Take now the editorials published in *The Record-Union* against the bill. Compare them with the demand for the disbarment and the defense of it which had been previously carried on in the same paper. Do they not furnish further proof that the disbarment was the work of The Southern Pacific Company?

28. The False Report of the Disbarment Case.---The Mutilation of the Record.---The Suppression of the Proof of Justice Ralph C. Harrison's Villainy.---The Libel Upon the Attorney, Published in the Name of the State.---The Justices Still Following The Record-Union.

(1) The False Report of the Case.

In Blackstone's Commentaries, after the statement that the decisions of the courts are the evidence of what is the law, it is said (Vol. I, p. 71):

"The decisions therefore of courts are held in highest regard, and are not only preserved as authentic records in the treasuries of the several courts, but are handed out to public view in the numerous volumes of *reports*, which furnish the lawyer's library. These reports are histories of the several cases, with a short summary of the proceedings, which are preserved at large in the record, the arguments of both sides and the reason the court gave for its judgment."

A statute of California (Political Code, Secs. 410, 767-782) provides for the publication of the reports of the decisions of the Supreme Court, and for their free distribution to various officers in every county of the State, to the Federal Judges within the State, to the Congressional Library at Washington, and to every State in the Union, and also for their being put upon sale to the public generally. The statute also provides minutely (Secs. 771-775) that the making up of the reports shall be supervised by the Justices of the Supreme Court, and that their directions shall be implicitly followed, and among other things says (Sec. 773):

"Each report shall be made in manner and form as the Court may direct."

After the bill which had been passed by the Legislature had been defeated as above stated, the Justices of the Supreme Court proceeded, under the power given them by the statute, to make up, without even the pretense of notice or a hearing, an official report of the disbarment case, and in July 1895, caused the report so made up to be published in Volume 105 of the California Reports, there to stand permanently before the world, and to be distributed by the State, and through-

out the nation, as the official and only authentic exhibition of the case. In that report they published *in full*, abating not so much as a word, the decision of disbarment, both the part signed by five Justices and that expressing the concurrence of Wm. H. Beatty, the Chief Justice, and also the citation, which constituted their complaint against their victim, *and utterly suppressed every word of their victim's answer to the citation, and every word said or written by him in his defense.*

Now, pray consider the motive for that outrageously false, wicked and dastardly report of the case. The answer to the citation, all of which was so wickedly suppressed, consisted of nearly forty type-written pages of the size known as legal cap, and was a very careful and full exhibition of the facts, in the form of actual quotations of the evidence in the record, all showing fully and without contradiction the outrageous villainy of Justice Ralph C. Harrison discussed in the brief. Among the evidence there set out there was, for instance, the sworn admission of one of the Newmans, that it was upon Ralph C. Harrison's advice that he withheld from his deceased partner's family their means of livelihood, and that Ralph C. Harrison was at the time their (the Newmans) attorney. *If that answer to the citation had been published, it would have given to the world the proof of Justice Ralph C. Harrison's villainy and of the outrage and wickedness of the disbarment; and it was for that reason that it was suppressed from the report.*

The citation and the answer to the citation are of course correlative and co-ordinate parts of the record. The citation was published in the report; the answer to the citation was omitted from the report. Such a

report of the case was therefore a mutilation of the record, an act the same in principle as the mutilation of the record of *Heckman v. Swett*, stated on pages 60-62 above.

The judgment of disbarment several times mentions the answer to the citation, and always in hostile and disparaging terms. It says, for instance (in the part signed by five Justices): "The respondent Philbrook filed a written answer to the citation," and that "in his written answer he boldly contended," etc. (See the Appendix, p. 23). And in the part written specially by Wm. H. Beatty, the Chief Justice, it is said, * * * "as to the propriety of modifying his written answer and of introducing into that permanent record," etc. (Id. p. 32). In the official report the judgment of disbarment was published in full, and so, too, was the citation; the "written answer to the citation" has been omitted and utterly suppressed.

Here, again is the proof that the purpose of the disbarment proceeding was to whitewash Justice Ralph C. Harrison and to shield and support him in his villainy.

(2.) The False and Libelous Report of the Case Was Also the Work of The Southern Pacific Company.

It is a noteworthy fact that the false and libelous report of the case just stated was also set on foot by The Southern Pacific Company. The Southern Pacific Company published the citation in full on Dec. 7, 1894, in *The Evening Post* (see the Appendix, pp. 6-8). They also published the disbarment judgment in *The Record-Union* on Jan. the 8th and Jan. the 14th, 1895 (see the

Appendix, pp. 34, 36-39). In the editorial published on Dec. the 20th in *The Record Union*, they also mentioned the answer to the citation. They there said, "his elaborate written answer in which he sets up all he has to plead in his own behalf" (see the Appendix, p. 17) and "he presented in print every particle of testimony taken or that can be taken in the case" (Id.)

They never published so much as a word of the answer to the citation. And in this the motive of The Southern Pacific Company was precisely the same as that with which a like false report of the case was published in The California Reports, as above stated, viz., to whitewash Justice Ralph C. Harrison, and to shield and support him in his villainy.

(3.) The Outrage Committed by So Reporting the Case.

And pray consider what has been done to the victim of the crime by so outrageously false and dastardly a report of the case.

In Kent's Commentaries it is said (Vol. 2, p. 16):

"As a part of the right of personal security, the preservation of every person's good name from the vile arts of detraction and slander is justly included."

Blackstone says (Comm., Vol. 1, 134):

"The security of his reputation or good name from the arts of detraction and slander, are rights to which every man is entitled, by reason and natural justice; since, without these, it is impossible to have the perfect enjoyment of any other advantage or right."

In *Bouvier's Institutes* (§ 2234) it is said :

“In selecting those among his fellow creatures in whom either to repose his interest or his affections, every one will naturally discard all whom he suspects or believes to be unworthy of trust. The acquaintance which each man has with the characters of other men can be but limited, and, most usually, he derives his information in this particular from others. Should their report of any individual, however unfounded in truth, be unfavorable, though it may not operate conviction on his mind, it will engender distrust; for it can hardly be imagined that it is wholly a malicious falsehood. Men are not inclined to take the trouble to ascertain the truth or falsehood of statements made in relation to others, but when a man is so disposed he has not, perhaps, an opportunity of examining the matter, nor is he able to disprove the charge to his own satisfaction, and trace its falsehood through all the varieties of knavery that produced it; so that if the party accused be in possession of his confidence or esteem, or become at any time a candidate for either, he will naturally reject his claim in one case and renounce him in the other. Hence it is that a charge or accusation which imports that a man is unfit for society, for his profession or his trade, * * or for his situation of public trust, is likely to raise a suspicion or belief that he is really incapacitated, and thereby to cut off or diminish his means of attaining to, or, if already in possession, is likely to deprive him of the enjoyment of either, and is therefore injurious.”

These quotations refer to injuries to one's good name when committed by a private person and in such a way as to last only for a time more or less brief. But in the report of the disbarment case here mentioned its authors have caused their victim to be published with outrage-

ous defamation and calumny by the State of California and in permanent form, to be read and referred to as an authority in every part of the nation and in foreign countries as well, and for all time.

29. A Second Deliberate and Wicked Reaffirmance of the Disbarment—A Second Publication of the Libel in the Reports.

On pages 277-278 above I have stated the fact of my submitting to the Supreme Court on Feb. 2, 1895, a printed petition asking that the judgment of disbarment be set aside, and that two days later it was answered by the Justices in the two words, "Rehearing denied."

On Feb. 9, 1895, I called on Wm. H. Beatty, the Chief Justice, at his official chambers in San Francisco, and earnestly protested against such a disposition of that petition, reminded him that the Constitution of the State, as well as natural justice, required that if the petition was to be denied, the reasons for the denial should be stated, and earnestly requested that the petition be given a decision stating the grounds upon which it was made. At the same time I stated to him that the reason why I made the request was, that any such decision must needs show that the disbarment was unlawful and unjust. To this appeal Wm. H. Beatty, the Chief Justice, then replied that he and his associates, the other Justices, looked upon the petition as still pending before them as a motion for a new trial, and that they would presently decide it as a motion for a new trial, and would then give the reasons for their decision.

Time passed and the promise was not kept. Meanwhile the bill was passed by the Legislature and defeated in the hands of the Governor as above stated. I thereupon repeatedly called upon Wm. H. Beatty, the Chief Justice, and reminded him of his declaration that the petition was still pending as a motion for a new trial, and of his promise that it should be decided as such and that the reasons of the decision should be given, and earnestly requested such a decision. The reply was a decision filed July 5, 1895—a decision huddled up in conclave and announced anonymously as having been made by “The Court,” so as not to reveal by what particular person it was drawn up. That decision referred to the disbarment with the general expression of approval, *reproached me for insisting that the petition was still pending*, and said: “It would be preposterous to expect that a motion for a new trial would prevail, after an application for a rehearing has been denied, upon a consideration of the same points which are presented by the motion for a new trial,” and *again refused to state any reason why the petition was denied*. In that decision Wm. H. Beatty, with his characteristic perfidy, concurred.

In the decision filed July 5, 1895, as just stated, the Justices gave reasons for their assertion that no motion for new trial was pending. They thus showed that they were well aware that it was due from them to assign some reason or ground for a decision. Why, then, did they persist—why have they ever since persisted—in refusing to assign any ground or reason for denying the petition submitted to them on February 2, 1895, with an oral argument in its support?

The reason is that that petition was unanswerable,

and they all knew it. In denying that petition, they all joined again in the crime of the disbarment. They again deliberately, wilfully, intentionally, dishonestly and corruptly misused the offices of Justices of the Supreme Court of California, to deny justice, to shield and uphold villainy and to perpetrate further villainy, cruel oppression and outrage and a great crime.

And upon that decision of July 5, 1895, by which they thus rejected again my petition for relief from the disbarment, the Justices made in volume 108 of the California Reports, another report of the case, again calling attention to the disbarment and referring with approval to the false and wicked report of it which they had previously made as already stated, and setting out a copy of their decision of July 5, 1895, just mentioned.

III.

The Disposition of the Appeal From the Judgment and of the Appeal From the Probate Court.

1. The Appeal From the Judgment.

As above stated (pp. 54-5 above) a separate appeal had been taken from the *judgment* given by the Superior Court for the two Newmans. That appeal is the case No. 15,731 on the Supreme Court Register, and in it the administrator asked for a reversal of the judg-

ment on what appeared in the complaint and answer alone, irrespective of the evidence. After the disbarment of the attorney, the Justices McFarland, Temple and Henshaw, on February 6, 1895, after denying a hearing of the case, entered an order falsely declaring it to have been submitted to them as Department Two of the Supreme Court. One of the Supreme Court Commissioners then prepared for them a decision of the case, ruling that, because the Newmans in their answer admitted the estate of their deceased partner to be entitled to a judgment against them for \$662.40, therefore the judgment should have been against the Newmans for that sum, irrespective of the evidence, and that the Newmans should pay the costs of the appeal, and in all other respects ruling in favor of the two Newmans. This decision was placed entirely upon technical grounds, none of them touching or pretending to touch the merits of the case. On June 29, 1895, the three Justices last mentioned adopted that decision as the decision of Department Two of the Court, but first struck out the express direction that the Newmans should pay the costs. The striking out of that express direction did not, however, affect the result, for, by virtue of one of the rules of the Supreme Court, the Newmans were still bound to pay the costs of the appeal.

The two Newmans thereupon, by Reinstein & Eisner and E. R. Taylor as their attorneys, petitioned the Court, and urged that the estate of their deceased partner was not entitled to anything from them, not even the \$662.40, and that even if it was entitled to a judgment for the \$662.40, it should be saddled with the entire costs of the appeal. The Court in bank, all the Justices (Ralph C. Harrison included) apparently tak-

ing part in the decision, responded without granting the administrator any hearing, by ordering the judgment of the Department Two changed so as to contain an express direction that the estate of the deceased partner should not recover the costs of the appeal, but should pay the costs of the two Newmans.

The administrator (Mr. Rankin) thereupon filed a petition protesting against the action of the Justices last stated, on two grounds, viz., 1: That the judgment of the Department Two was, under the standing rule of the Court, that the Newmans should pay the costs of the appeal, and that the Constitution of the State expressly declares that the judgment of a department of the Supreme Court shall be final unless a hearing in bank is ordered within thirty days (and such is the express provision of Article VI, Section 2, of the Constitution); and 2: The injustice of requiring the deceased partner's estate to pay all the costs of the appeal, after deciding that the appeal was just and that the Newmans had been wrong in exacting the judgment they had obtained in the Superior Court. The Justices immediately and unanimously denied that petition, but stated no ground for so doing.

The Justices then caused their decision to be falsely reported in Vol. 107 of the California Reports, so as to make it falsely appear that the express direction that the deceased partner's estate should pay all the costs of the appeal, even the costs of the two Newmans, had been given in the judgment of the Department Two.

This decision of the appeal from the *judgment* is further referred to under a subsequent head. But at this place attention is invited to four things, namely:

1. The denial to the administrator of the fundamental right to a hearing of the case.

2. The manifest outrage of compelling the deceased partner's estate to pay all the costs of the appeal, even the costs of the two Newmans, although deciding that the appeal was just, that it was necessary to obtain that to which the estate was entitled and which was wrongfully withheld from it by the two Newmans.

3. The deliberate violation of an express provision of the Constitution making a judgment of a Department of the Supreme Court final unless a hearing in bank is ordered within thirty days—a violation of the Constitution in favor of the two Newmans.

4. The false report of the case, falsely pretending that no such violation of the Constitution had been committed.

2. The Disposition of the Appeal of Mrs. Levinson and Her Daughters from the Probate Court.

The appeal here referred to is that mentioned on pages 55-59 above. And on pp. 231-232 above, it is pointed out that in the disbarment of the attorney its authors inserted a charge, one of the six new accusations there set out, taking sides against Mrs. Levinson and her daughters concerning that case, and thereby wantonly laying upon the Court a pledge to decide the case against them.

The disbarment of the attorney left Mrs. Levinson and her daughters without an attorney, and the Court had been made to express in advance such denunciation.

of their cause that it would have been idle for them to seek to employ another even if they had been financially able to do so. The Court had denied them the right to employ an attorney in the case. The Court then proceeded to deny to them a hearing of the case. To that end and with that effect, Thomas B. McFarland, Jackson Temple and Frederick W. Henshaw, as the Justices, constituting Department Two of the Court, made on April 1, 1895, an order falsely declaring the case to have been submitted to them for decision without argument. On August 6, 1895, they filed a decision of the case against Mrs. Levinson and her daughters, the appellants, *i. e.*, in favor of the side they and their associates had so pledged themselves to in the decision disbaring the attorney. But the case was so strong that, though they had thus pledged the Court to decide against the widow and her daughters, though they had prevented them from having the case argued, they were forced to say that their decision in favor of those whom in advance and without evidence they had declared to be "certain reputable lawyers," was made "without signifying approval of all the methods employed by them," etc. They also modified the judgment of the Probate Court in some of its outrageous features. They struck out the item of \$240 mentioned on p. 57 above, reduced the witness fee of \$50, also there mentioned, to \$2.00, and struck out the commissions allowed the suspended administrator, and directed that he might apply for commissions at the closing of the administration of the estate. In all other respects they affirmed the judgment. The aged widow filed a petition protesting against the decision, urging the justice of her case, pointing out that, in the decision disbaring her

attorney, the Court had been pledged in advance to decide against her and that she had been wrongfully deprived of opportunity to have her case argued and deprived of the help of legal counsel, giving an outline of the treachery and wickedness of Ralph C. Harrison against her, and asking that the disbarment of her attorney be withdrawn and her cause heard by the Court in bank. The Justices denied her petition without stating any ground, and ordered it struck from the files.

Here was another judgment of the Supreme Court of California, made against Mrs. Levinson and her daughters, after its authors had pledged themselves in advance so to decide, after denying their victims, the three defenseless women, the right to employ an attorney, and after denying them the fundamental right to a hearing of the case.

The decision may be seen reported by its authors as *Estate of Levinson*, 108 Cal., 450.

No Pains to Conceal the Corrupt Intention to Decide the Remaining Case for the Two Newmans.

Let it be borne in mind that the decision last mentioned was made on August 6, 1895, and that the main case against the two Newmans, the appeal from the order of the Superior Court denying a new trial of the accounting suit, was still admittedly pending in the Supreme Court. Now, in the case in which that decision was made, one of the acts of misconduct of the "certain reputable lawyers" which was urged by Mrs. Levinson and her daughters as evidence of their infi-

delity was that on the trial in the Superior Court of the suit against the two Newmans, those "certain reputable lawyers," instead of assisting to present the case, had tried to force a compromise with the two Newmans for the administrator's costs and attorney's fees. In the decision upholding the "certain reputable lawyers," the Justices used the following language, which may be seen in Vol. 108 of the California Reports at p. 458 :

* * "while it pretty clearly appears * * that they * * [the "certain reputable lawyers"] then entertained small hope of ultimate success, and so were insistent (as was the administrator [the administrator presently suspended for his misconduct and forced to resign]) on a proposed compromise, which, if effected, would have given the estate little, if anything, more than the expenses of the action, yet it does not appear but that the course they recommended comported with the proper discharge of professional obligations ; in the light of the event it seems that it would have been most to the interest of the estate."

Of this language the words "ultimate success" and "light of the event" refer to the final outcome of the suit on behalf of the deceased co-partner's estate against the two Newmans, the surviving partners. The words "ultimate success" and "light of the event" could not have been used truthfully without meaning the final determination of the suit to be given by the Supreme Court. Whether they were in fact used with that meaning, or whether they referred only to the decision of the lower Court, still the language was a deliberate and unmistakable assertion that the final determination by the Supreme Court of the suit against the two Newmans was to be such that "it would have been most to the interest of the estate" to have accepted the "proposed compromise which, if effected, would have given the estate little if anything more than the

expenses of the action." Mrs. Levinson, in her petition last referred to, earnestly protested against the language so used, on the ground that it was such as virtually to pledge the Court in advance to decide against her interests and in favor of the two Newmans in a suit, which, though already in the Supreme Court, had not been given even the pretense of a hearing. But her protest was vain.

IV.

Other Facts Relating to the Main Case and Occurring Prior to the Final Decision.

- I. **The Briefs.—The Appellant's Brief.—The Newmans and Their Attorneys Openly and Insolently Claiming the Disbarment As Entitling Them to a Decision of the Case in Their Favor.**
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We now return to the main case, the appeal from the order of the Superior Court refusing to set aside the decision ordering judgment for the two Newmans, the surviving partners. This is the case mentioned on page 55 above. It is the entire case of the estate of the deceased partner against the two Newmans, the surviving partners. The printed record of the case on file in the Supreme Court shows all the facts clearly and without contradiction.

(1.) The Appellant's Brief.

On the same day (Jan. 5, 1895) that the attorney was disbarred, as above stated, the Justices of the Supreme Court unanimously ordered the entire brief referred to in the disbarment judgment to be struck from the files of the court. This of course left the appellant, the administrator, without any brief whatever, to show the grounds of the appeal. His attorney had been disbarred, his profession taken away, and he deprived of his very means of livelihood and avowedly as a "punishment," a "penalty," for showing in his brief and on behalf of his clients that the transfer by the former executor to the two Newmans was fraudulent. The Judge who had decided the case for the two Newmans in the Superior Court had there asserted that that was the only ground of the case. (See pp. 3-4 of the Appendix). The Newmans' attorneys, E. R. Taylor and Reinstein & Eisner, had made the same assertion in the Superior Court and also in the Supreme Court in their brief filed against the appeal which had been taken from the *judgment*. The Justices, the pretended authors of the disbarment judgment, had therefore in fact not only deprived the administrator and the three defenseless women represented by him, of an attorney, but had forbidden any attorney from attempting to represent the estate of the deceased partner in the suit, and menaced the plaintiff himself with "punishment" if he should attempt—even if he had been capable—to argue the case himself. The plaintiff, Ira P. Rankin, then special administrator of the deceased partner's estate, had never been a lawyer, and was besides feeble

with age. Having been thus deprived of an attorney and terrorized, he took a copy of the attorney's brief that had been struck from the files, as stated above, cut out of it the entire argument and ground that the secret transfer to the two Newmans was illegal because of its being a scheme to influence the Court corruptly to decide for the two Newmans, and, having so mutilated the brief, signed it with his own name and on February 4, 1895, filed it as his brief. He, however, left in the brief a statement of the decision in the case of *Egerton vs. Earl Brownlow*, referred to on pp. 81-86 above, and extracts from that decision, showing the ground on which it had been made. He also left in the brief a clear and orderly statement of the evidence collated from various parts of the record, all showing with the utmost clearness that the transfer to the Newmans was fraudulent, and that they had been guilty of every thing charged against them in the brief as it had been originally filed.

(2.) The Newmans Openly and Insolently Claiming the Disbarment as Entitling Them to A Decision of the Case in Their Favor.

The Newmans were left in the enjoyment of the right to employ attorneys. And on April 2, 1895, E. R. Taylor and Reinstein & Eisner, as their attorneys, filed for them, with the Clerk of the Supreme Court, a brief against the administrator's brief just mentioned. And so coarse-grained were the rogues, so eager to strike like cowards at the attorney, who, because of the disbarment, could make no reply, that, not content with

having in the disbarment an efficient pledge of a decision in their favor, they openly claimed it as such in their printed brief. The first paragraph of their brief begins as follows :

“ Had it not been for the recent unfortunate experiences of this Honorable Court with the author of the brief of which the appellant’s brief, in *propria persona*, is simply a patchwork, it would have appeared incredible to the Court,” etc., etc.

The next paragraph in their brief begins as follows :

“ Had it not been for those experiences, it would have appeared incredible that,” etc., etc.

And every one of the next seven paragraphs of their brief begins with a repetition of the words last quoted.

Here may be seen a difference between, on the one hand, the finished rogues who constitute The Southern Pacific Company and their general officers, and, on the other, such coarse-grained common knaves as the two Newmans and their attorneys, Reinstein & Eisner and E. R. Taylor. The Southern Pacific Company, having dictated and obtained the judgment of disbarment and defeated the bill passed by the Legislature, were shrewd enough to know that they had thus secured for their agent, Justice Ralph C. Harrison, a final decision of the case against his betrayed clients, Mrs. Levinson and her daughters; and, knowing this, watched in silence. The two Newmans and their attorneys, Reinstein & Eisner and E. R. Taylor, coarse-grained common rogues, could not refrain from expressly avowing the judgment of disbarment to be the ground upon which they were to obtain the final decision.

2. The Case Falsely Declared to Have Been Submitted to be Decided by Department Two of the Court Without a Hearing.

On August 14, 1895, the Justices McFarland, Henshaw and Temple called up the case in Department Two of the Court. No one appeared for the appellant. E. R. Taylor and J. B. Reinstein appeared for the two Newmans; and, with their consent, the three Justices last named then caused an order to be entered in the minutes by which the case was falsely declared to have been submitted to Department Two of the Court to be decided without a hearing.

3. The Disbarred Attorney Made Administrator—A Refusal to Allow a Hearing of the Case—A Fourth Refusal to Set Aside the Disbarment Judgment.

In September, 1895, and upon the written request of Mrs. Levinson, I, the immediate victim of the disbarment, was appointed by the Probate Court of San Francisco the administrator of John Levinson, the deceased partner, and thereupon took the place of Ira P. Rankin as the plaintiff and appellant in the Supreme Court in the suit against the two Newmans, the surviving partners.

Upon thus becoming the plaintiff in the suit I immediately filed in the Supreme Court a written motion asking for a hearing of the case, to be allowed to argue the case, and asking also that the case be heard in bank, and that the Commissioners of the Court, as well as the Justices, should hear the argument. In the written

motion I pointed out that, for the reasons above stated, the decision disbarring the attorney pledged its authors and those who had refused to set it aside, to decide this case for the two Newmans. I also showed the groundlessness of the disbarment and asked that it be set aside so as to withdraw the language which it contained, taking sides in advance in favor of the two Newmans.

That motion came on for hearing before the Supreme Court in bank on October 7, 1895. As soon as I attempted to make the motion, the Chief Justice, Wm. H. Beatty, acting as the spokesman of the Court, with great anger refused to allow it to be presented and he and his associates, after denying a hearing of the motion, entered then and there an order declaring it denied.

4. The Case Falsely Delared to Have Been Submitted to the Court in Bank to be Decided Without a Hearing.

Under the order, above mentioned, falsely declaring the case to have been submitted to Department Two of the Court to be decided without a hearing, the case was kept in Department Two until March 17, 1896—more than seven months. On March 17, 1896, the Chief Justice, Wm. H. Beatty, in the absence of the appellant and without any notice to him and without his consent, made an order transferring the case to the Court in bank, and falsely declaring it to have been submitted to the Court in bank to be decided without a hearing.

The case was then kept in that condition and before the Court in bank for seven months and nineteen days longer, *i. e.*, until November 5, 1896. In the meantime there was

5. The Making of an Appeal to the People.

The third day of November, 1896, was the day of the election of the President of the United States and on the same day there was held in San Francisco the general election of City and County officers, an election which is held in San Francisco biennially. Here was an opportunity of appealing to the people against the crime of the disbarment. I had resolved to make such an appeal, as a last recourse, but as long as I could I refrained from entering upon it, hoping that the Justices of the Supreme Court would themselves recognize their crime and voluntarily desist from it. After waiting until within about three weeks of the election, I went before the people of San Francisco as an independent candidate for Judge of the Superior Court. I had no support of any newspaper, for a complete suppression of the case in the newspapers had long before this time been established. I therefore addressed to the electors of San Francisco a short paper under the heading of an "Appeal to the People," giving a brief statement of the disbarment stated above, of the passage of the bill by the Legislature and its defeat by the pocket-veto of the Governor, and of the case against the two Newmans, of which the final decision had not then been made; and I asked the electors "to lift up and vindicate the right to argue freely a case in the courts of this State."

That "Appeal to the People" was answered, according to the official return, by 12,644 votes—and the actual number of votes then cast for me was probably far greater—votes given for me as an independent candidate, given, too, amid the distractions and excitement of a presidential campaign, and though I was without

the support of a newspaper or a party, and though the electors were addressed only through the medium of a short circular distributed from hand to hand or through the mails, and which fell far short of reaching them all.

To show the purpose of that "Appeal to the People" I give here the following extract from the short paper by means of which it was made, as just stated :

"The Justices of the Supreme Court, in defense of their rascal associate and his confederates, have destroyed that right [the right to argue a case in the courts] by decreeing that I shall not labor at my profession, asserting their decree to be a "punishment" for arguing the case of the widow and her daughters against the villainy of Justice Harrison and his confederates.

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"The utter absurdity of every ground even pretended for so depriving me of my means of livelihood [referring to the disbarment] was elaborately shown by Edmund Burke in his great speech against Warren Hastings, and is illustrated by the great arguments of many of the most approved forensic speakers. No lawyer can attempt to justify it unless from ignorance, or insincerity, or slavishness. Every Justice of the Supreme Court well knows that their decision against me is groundless, unlawful and iniquitous to the last degree. Its sole object and purpose was to deal me a blow so ruinous as to compel me, in order to regain the means of livelihood of myself and my family, to abandon my clients and retract the charges and deny the proofs of Justice Harrison's villainy.

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"It is well known that in all the Courts of the State the rulings of the Supreme Court are taken as the law for all cases subsequently arising, re-

gardless of any principle of justice or of anything in the Constitution or statutes.

"In 1890 * * * the Supreme Court made and placed in the reports a ruling that a Judge may always set aside the verdict of a jury *whenever it does not satisfy him*. (See Cal. Reports, Vol. 85, p. 377.) That ruling has ever since been followed by the Courts, and has in fact destroyed the right of trial by jury in this State.

"A still more important right of every human being—a right of the first importance—is that of presenting freely to a Court of Justice, either in person or by attorney, as he may prefer, what he conceives to be the grounds on which he seeks its judgment. That right, by the decision against me, has been struck down and destroyed in this State.

"By the agency of the "boss," the monopolies and trusts control the nominating conventions of the great parties, and thus dictate who shall be the Judges of the Courts. Under the rule established by Justice Harrison and his associates, destroying the right of trial by jury, those who select and control the judges of the Courts have an absolute control of the decision of every law suit. Under the rule established by Justice Harrison's associates in the disbarment inflicted upon me, those who select and control the Judges, may, at their will, forbid and suppress argument. By the decision against me, destroying the right to argue a case, the most oppressive tyranny has, in fact, been established in this State.

"I, therefore, as Independent Candidate for the office of Judge of the Superior Court, * * * appeal to the voters of San Francisco, to lift up and vindicate the right freely to argue a case in the Courts of this State.

"The Justices of the Supreme Court, in defense of their rascal associate and his confederates, have

destroyed that right by decreeing that I shall not labor at my profession, asserting their decree to be a "punishment" for arguing the case of the widow and her daughters against the villainy of Justice Harrison and his confederates. By your votes you can decree that I shall be allowed to labor at my profession, and for the whole people, as a Judge of the Superior Court. You may thus overrule by your votes the decision of Judge Harrison's associates in the Supreme Court, destroying, in his interest, the right freely to argue a case in the Courts of this State."

Many thousands of copies of that paper were by me issued and published over my name in San Francisco, between the middle of October and the 3rd day of November, 1896. The paper was also translated into Italian, and many thousands of copies in Italian, also over my name, were distributed among the electors of San Francisco speaking the Italian language.

The only reply to that publication, from the persons there accused, was *to keep back the final decision for the two Newmans until Nov. 5, 1896, the second day after the election.*

V.

The Final Decision for the Two Newmans.

The seven Justices of the Supreme Court and their masters, the organization called The Southern Pacific Company, were apparently confident that, after so great delay, after having for so long a time established a suppression of the case by the newspapers, and

after having for so long a time completely destroyed my law practice and deprived me of income, and after the expense which I had incurred in the appeal to the people of San Francisco, just mentioned, and my failure to escape, by means of that appeal, from the miserable condition into which I had been so wickedly thrown by the disbarment and by the false and libelous report of the case in the California Reports—that, after I had undergone so much, they could proceed safely to consummate their crime. And, accordingly, the Chief Justice, Wm. H. Beatty, and the Associate Justices Charles H. Garoutte, Frederick W. Henshaw, Thomas B. McFarland, Jackson Temple and Wm. C. Van Fleet, filed on November 5, 1896—two days after the election last mentioned—a decision, professing it to be a decision of the Supreme Court in bank, and declaring the case to be finally decided for the two Newmans and the deceased partner's estate to be mulcted with the costs of the appeal—a decision carrying out strictly the orders of The Southern Pacific Company, as shown in the editorials published in *The Record-Union* on December the 13th and December the 20th, 1894, and reeking from end to end with perfidy and cunning and trickery and bad faith and basest lies, outrageous lies about the grounds of the appeal, outrageous lies about the facts of the case, and outrageous lies about the law of the State, the law which ought to have been, but was not, allowed to govern the decision.

A copy of the decision is shown in the Appendix (pp. 51-75).

Like the judgment of disbarment, the final decision for the two Newmans is in two parts. The one part purports to have been written by the Associate Justice

Charles H. Garoutte. The other part purports to be the concurring opinion of the Chief Justice Wm. H. Beatty and the Justices Temple and Henshaw, but from the style as well as from the order in which the names are placed, was evidently written by Wm. H. Beatty, the Chief Justice.

And the respective peculiarities of the two parts of the final decision for the two Newmans are the same in kind as those of the two parts of the judgment of disbarment which are pointed out above. In the part purporting to have been written by the Justice Charles H. Garoutte, there is the more self-control, the more cunning, the more careful concealment behind generalities and vagueness. In the part written by Wm. H. Beatty, the Chief Justice, there is for the above detail, a want of self-control, and therefore the more self-exposure in dishonesty and malevolence, and for the more open indulgence in deliberate falsehood upon falsehood. Here is exhibited the same evil distinction of the Chief Justice, Wm. H. Beatty, which is shown in the judgment of disbarment and is pointed out on pages 260-262 above.

1. The Case was Denied a Hearing.

It has already been stated that the administrator of John Levinson's estate and the three defenseless women represented by the administrator, that is to say, the persons against whom the decision was made, were, against their ineffectual protests denied even the fundamental right to a hearing of the case in the Supreme Court. From this fact alone the final decision against them is unlawful and outrageous to the degree of being in law utterly void.

That this is so is shown by numerous decisions of the courts cited and quoted on pages 128-138 above.

True, the cases there cited state the principle in its specific application to courts of original jurisdiction. But the principle is of course equally supreme in the case of judgments by an appellate court. It is also equally supreme even when a printed brief is before the court stating what the party conceives to be the grounds of his case. This is of course, to any just mind, manifest in principle; it has been expressly so determined and declared judicially; and it is stated in an express guaranty of the Constitution of California.

(a) *It Has Been Expressly So Determined and Declared Judicially.*

The case of *Queen vs. Archbishop of Canterbury*, 1 Ellis & Ellis, 545, (decided by the English Court of Queen's Bench in 1861) is a good illustration. The case was a suit for a mandamus against the Archbishop of Canterbury to compel him to hear an appeal from a decision of the Bishop of London revoking the license of Rev. Alfred Poole as an assistant curate. The Archbishop had already (as was claimed by him) decided the appeal; his answer to the alternative writ showed that the appeal had been taken in writing, that the whole case was in writing—*i. e.*, contained in a written record—that the Rev. Alfred Poole (the appellant) had filed a written statement of the grounds of his appeal—*i. e.*, a written brief stating his argument—and that he, the Archbishop, upon examining that written statement of the appellant, “was of opinion, upon the admissions

and statements of the Rev. Alfred Poole himself" that the judgment appealed from was correct and that he had therefore decided the appeal in writing, under his hand, "confirming the said revocation."

The Court of Queen's Bench listened at length to counsel for the Archbishop, but refused, because of the clearness of the case, to hear counsel for the petitioner, and ruled that the decision which the Archbishop had made was *utterly void*, and solely because he had not given the appellant a hearing. The Court therefore granted the mandamus. The Judges gave their reasons as follows:

"Lord Campbell, C. J.—I regret that the mandamus must issue. I was in hopes that this controversy would have come to an end without this discussion. But we have no discretion. No doubt the Archbishop acted most conscientiously, and with a sincere desire to promote the interests of the Church; but we all think he has taken an erroneous view of the law. He was bound to hear the appellant, and he has not heard him. It is one of the first principles of justice that no man should be condemned without being heard. We do not say whether the Archbishop's decision was right or wrong. We say only that he has not heard the petitioner * * * The appellant here has not been heard. * * * Without any communication with him, his Judge decides against him. That was not a hearing. * * * We think that the mandamus to hear the appeal must go, as, in our opinion, there has been no hearing."

"Wightman, J.—It is not our duty to give an opinion upon the merits of the petition. We merely say that, *ex debito justiciæ*, every one has a right to be heard before he is condemned."

"Crompton, J.—I have not been able to entertain any doubt that we are bound to issue this mandamus. Where a statute of this kind gives an appeal, it gives, by implication, a right to be heard upon the appeal. Sect. 111 clearly contemplates a judicial inquiry before the Archbishop. * * * Even if the Archbishop should direct that all appeals to him must be in writing, still he must hear the appellant upon those written appeals. * * * Here the appeal has not been heard, and the mandamus must issue to the Archbishop to hear it."

"Hill, J.—This mandamus is for an inquiry to be made by the Archbishop. * * The question for us is, is the Archbishop, under the statute, bound to hear the appeal; and, if so, what is a hearing. Now, it is clear from Sects. 98, 111 and 123, that the Archbishop is bound to make a judicial inquiry into the matter of the appeal, and to give a judgment as the result of that inquiry. What does the law require in such a case? Invariably, that the parties who are to be liable to the judgment shall be heard. This is a principle, which has been laid down, in numerous decisions, in all the courts. I hold in my hand one of such decisions, *Capel v. Child*, 2 Cr. & J. 558, in which the question was, whether a bishop was justified, under Stat. 57 G. 3, C. 99, S. 50, in issuing a requisition to an incumbent to appoint a curate, etc., without having first heard the incumbent. The Court held that he was not justified, and that he was bound to have the incumbent before him in the first instance. And this, although Sect. 50 enacts 'that whenever it shall appear to the satisfaction of any bishop, either upon his own knowledge or upon proof by affidavit,' that the ecclesiastical duties of a benefice are inadequately performed, he may require the incumbent to nominate a fit per-

son to assist; and although the Bishop's requisition contained these words, 'Whereas it appears to us of our own knowledge.' That is a case as strongly in point as can well be conceived. When we look at the petition here, we find that the appellant denies that his admissions were to the effect stated by the Bishop. That is the question which he submits to the judgment of the Archbishop. He has the right to be heard before the Archbishop to argue that question; and the Archbishop cannot give judgment until that question has been argued before him."

In the *Railroad Tax Cases*, 13 Fed. Rep. (cited on pp. 129 and 133 above), Justice Field, in giving judgment for The Southern Pacific Railroad Company, declared the same principle. In answering the argument that the railroad corporation had presented a sworn statement of their property and its value, before the tax was assessed against them, Justice Field there said (at p. 750):

"The presentation of the statement can no more suspend the necessity of allowing a subsequent hearing of the owners than the filing of a complaint in court can dispense with the right of the suitor and his contestant to be there heard."

(b) *The Right to a Hearing Is a Fundamental Right Implanted by the Creator.*

The right to a hearing of the case is a fundamental natural right. It is essentially the right of self-defense, a right so deeply implanted that it is claimed spontaneously by every member of the animal creation. It is

also a right of the greatest importance. In a law case a human being may, and often does, have at stake all that he most values. His liberty may depend upon the decision. His life may depend upon it. His property, his means of sustaining life and making it pleasant, may be involved. And it is a truth of the commonest knowledge that there is nothing that can equal, nothing that can approach, open, verbal discussion as a means of showing the important and essential truth and justice of a law case and making it known to those who are to give the decision. It would be just as unreasonable to prohibit verbal discussion on any other matter among men as to allow Judges to forbid the free, open, oral argument of a law case.

(c) *The Right to a Hearing of Every Case in the Supreme Court is Guaranteed by the Constitution of California.*

The Constitution of California, in the 2nd section of the 6th article, declares :

“ The concurrence of four Justices *present at the argument* shall be necessary to pronounce a judgment in bank ; but if four Justices *so present* do not concur in a judgment, then all the Justices qualified to sit in the case *shall hear the argument.*”

And, in the “ Declaration of Rights,” the same Constitution declares (Art. 1, Sec. 22) that such guaranty of the right to a hearing is both “ mandatory and prohibitory,” *i. e.*, both that the party shall be heard and that no decision shall be made against him unless he has been heard.

The words of the Constitution, "*present at the argument*," "*so present*" and "*shall hear the argument*" are simple and plain words. They mean what they say. They are utterly inapplicable to the mere reading of briefs. The guaranty of the Constitution plainly is that there shall be no decision of the Supreme Court of this State, in bank, against a party without first allowing him the right freely to argue the case in open court, nor unless the four Justices concurring in the judgment were "present at the argument."

(d) *The Systematic Violation of the Right by the Southern Pacific Company's Justices.*

In 1892 the Justices of the Supreme Court of California, in a decision written (rather appropriately) by Ralph C. Harrison, and concurred in by the Justices Wm. H. Beatty, Thos. B. McFarland, Charles H. Garoutte and John J. De Haven, made and placed in the Reports a ruling (*Niles v. Edwards*, 95 Cal. 43), declaring, and enforcing the declaration, that the words of the Constitution, "present at the argument," "so present," and "shall hear the argument," do not secure any right to a hearing of the case by the Justices who are to give the decision. In that decision they say, "The term 'heard,' as here used * * signifies the consideration and determination of a cause by the Court or by a Judge" * * "does not necessarily imply that an additional or oral argument must be made or listened to before it can be so considered or determined."

Is it not plain that men capable of making such a ruling can not be restrained or held by language? To such men, language means anything or nothing accord-

ing to the arbitrary dictates of their corrupt inclinations. They have the minds and feelings of criminals. They are the *bad men*, whom Edmund Burke thus describes :

“ I do, then, declare my conviction, and wish it may stand recorded to posterity, that there never was a *bad man* that had ability for *good service*. It is not in the nature of such men ; their minds are so distorted to selfish purposes, to knavish, artificial and crafty means of accomplishing those selfish ends, that, if put to any good service, they are poor, dull, helpless. Their natural faculties never have that direction ; they are paralytic on that side ; the muscles, if I may use the expression, that ought to move it, are all dead. They know nothing, but how to pursue selfish ends by wicked and indirect means. No man ever knowingly employed a bad man on account of his abilities, but for evil ends.”

(e) *The Right to Have a Hearing of Every Case Appealed to the Supreme Court Is Fortified by the Requirement That the Decision Shall Be Given Speedily.*

It would, of course, be of little use to have a hearing of the case, unless the decision is to be given while it may be of value and before what is said at the hearing is forgotten. And the 24th section of the 6th Article of the Constitution (as adopted in 1879) therefore prohibits the long withholding of the decision, saying :

“ No Judge of a Superior Court nor of the Supreme Court shall, after the first day of July, one thousand eight hundred and eighty, be allowed to draw or receive any monthly salary unless he shall

take and subscribe an affidavit before an officer entitled to administer oaths, that no cause in his court remains undecided that has been submitted for decision for the period of ninety days."

At the time the Constitution was adopted and ever since the entire salary of every Justice of the Supreme Court has been a "monthly salary" (Political Code, Sec. 1029). And it is a familiar rule of law (see 1 Kent Com., p. 467) that the imposing a penalty for any course of conduct is a prohibition of it.

The Constitution, therefore, guarantees that every case before the Supreme Court of this State, in bank, shall be argued orally, and that the decision shall be given within ninety days from the time the case is submitted.

In the denial of a hearing, there was, for the wrongful benefit of the two Newmans, and to cover the fraud and treachery and villainy of their confederate, "Mr. Justice Harrison," the deliberate and malevolent trampling down of a fundamental principle of natural justice and of an express guaranty of the Constitution. But the legal effect is that the decision is utterly void; the case is still pending in the Supreme Court, and all hearing and consideration of the case is denied.

2. The Justices Had Pledged Themselves in Advance to Decide the Case in Favor of the Two Newmans.

The pledge here referred to is the judgment of disbarment and the language there used, a pledge which was deliberately and with the utmost determination re-

peated by the report of the disbarment case. All this has been shown in the preceding pages.

The necessary effect of such a pledge, even when taken in a form far less likely to be insurmountable, has been very well stated by The Southern Pacific Company themselves. On April 2, 1896, E. S. Pillsbury, the agent of The Southern Pacific Company who has been mentioned several times in the preceding pages, addressed the United States Circuit Court in San Francisco, as an attorney, in the suit of The Southern Pacific Company against the Board of Railroad Commissioners (the suit mentioned on pp. 73-74 above). In contending that the reduction of fares and freights which the Board had made was illegal and ought to be held void because one of the Commissioners had been elected upon a party platform pledging him to make the reduction, Mr. Pillsbury, speaking as the representative of The Southern Pacific Company, then said:

“While we concede that this Board is, speaking generally, legislative and executive in character, we still say that the functions of the Commission are *quasi-judicial*. They are to determine what is reasonable and just between the railroad and the people. And the idea that any man who was called upon to judge as to differences, as to the establishment of rights between individuals, would commit himself in advance, is inconsistent and repugnant to all notions of fairness and justice. * * It is hardly supposable that a judge would do it. Suppose, if the Court please, that the members of the Venezuela Commission, which has lately been appointed, had come out in advance and expressed their views in regard to the rights of Venezuela and Great Britain, and what they would undertake to establish if they were appointed upon that Commission.

Suppose the President of the United States, knowing that they had expressed certain views or opinions, should appoint them. Why, if the Court please, the acts of the Commission would stink in the nostrils of the whole civilized world. Any judgment they might render would have no weight or consideration whatever."

Such is the character of such a decision as declared by The Southern Pacific Company themselves, by their agent, E. S. Pillsbury. Turn now to the pledge dictated by The Southern Pacific Company themselves to their tools the Justices of the Supreme Court of California—a pledge printed by them in advance in their newspapers *The Evening Post* and *The Record-Union* and taken thence and subscribed by the Justices in the judgment of disbarment—a pledge by which those Justices bound themselves in advance to give a final decision of the case in favor of the two Newmans. That was a pledge far more binding upon the future action of those Justices than a plank in a party platform could have been upon the action of those three Railroad Commissioners. Should not the final decision, thus pledged in advance, "stink in the nostrils of the whole civilized world" and "have no weight or consideration whatever"?

3. The Final Decision For the Two Newmans is the Work of The Southern Pacific Company.

On pages 236–253 above, attention is called to the fact that the peculiar falsehoods about the facts of the case which are set out in the judgment of disbarment were the invention of The Southern Pacific Company and, as such, were, in advance of the disbarment, pub-

lished in editorials in *The Record-Union*. It has also been pointed out that the disbarment judgment is the work of The Southern Pacific Company. Those same peculiar falsehoods reappear in the final decision of the case for the two Newmans. And throughout the final decision for the two Newmans the fact is manifest that that decision is also but the carrying into effect of the editorials published in *The Record-Union* on December the 13th and the 20th, 1894—a carrying into effect of the pledges which, in the disbarment judgment The Southern Pacific Company laid upon the Court. The final decision for the two Newmans is therefore not in truth a judgment of the Supreme Court of California. On the contrary, it is an act which The Southern Pacific Company have committed, by means of their wrongful possession of the Court, and in order to support their evil agent, the Associate Justice Ralph C. Harrison—to reward him for such practices as his mutilation of the record in *Heckman vs. Swett* (stated on pages 60–62 above) and to keep him for like practices in future. But The Southern Pacific Company have no lawful or just right to be the Supreme Court of California.

4. *The Case Was Denied a Concurrence of Four Judges.*

The Constitution of California, in the 2nd section of the 6th Article, provides:

“The concurrence of four Justices present at the argument shall be necessary to pronounce a judgment in bank, but if four Justices so present do not concur in a judgment, then all the justices qualified to sit in the cause shall hear the argu-

ment; but to render a judgment a concurrence of four Judges shall be necessary. In the determination of causes, all decisions of the Court, in bank or in departments, shall be given in writing, and the grounds of the decision shall be stated."

And another section of the Constitution, already quoted (Section 22 of the "Declaration of Rights") declares that all the above provisions are both "mandatory and prohibitory."

The Constitution here makes the "grounds of the decision" an essential part of the judgment. And the provision is that a judgment which lacks a concurrence of four Justices on any of its essential grounds is not a judgment of the Supreme Court.

This express guaranty of the Constitution is intended to secure only that which reason and natural justice manifestly require. If this were not so, then a judgment might be rendered for one party, while upon every question in the case a majority of the Court, even all the Justices but one, might be for the other party. Take, for example, a suit to recover a sum of money on contract. To such a suit there may be many defenses, such as: 1. The contract was not made. 2. It was not fulfilled by the plaintiff. 3. It was obtained by fraud and was rescinded. 4. The defendant has a release. 5. The defendant has a counter claim for an equal amount. 6. The claim has been paid. 7. It is barred by the Statute of Limitations. Now, suppose a decision made for the defendant in the following manner. One Justice decides for the defendant on the ground that the contract was not made, the six other Justices thinking that it was made. Another Justice decides for the defendant on the ground that the con-

tract was not fulfilled, all the others thinking it was fulfilled. Another Justice decides for the defendant on the ground of fraud and rescission, all the others thinking there was no fraud or rescission. Another Justice decides for the defendant on the ground of release, all the others thinking there was no release. Another Justice decides for the defendant on the ground of the counterclaim, all the others thinking that there is no counterclaim. Another Justice decides for the defendant on the ground that the plaintiff's claim has been paid, all the others thinking that it has not been paid. Another Justice decides for the defendant on the ground that the claim is barred by the Statute of Limitations, all the others thinking that it is not barred. Here would be a judgment for the defendant, while on every question in the case the Court would stand six to one for the plaintiff. Would such a result be permissible? If such a judgment were made, would it be a judgment of the Supreme Court of this State? Clearly not. It is forbidden by natural justice and by the provision of the Constitution here quoted.

Again, the essential thing in the decision of a case is to answer the questions involved. The answers to these questions are "the grounds of the decision." When those questions are answered, the conclusion follows as a matter of course. It cannot be that the requirement of "a concurrence of four Judges" applies only to the conclusion and not to the premises which alone establish that conclusion, only to that which follows as a matter of course, and does not apply to that which alone calls for the exercise of the faculties of judgment. What is it, then, upon which the Constitution requires "the concurrence of four Judges present at the argu-

ment," "a concurrence of four Judges?" Manifestly it is "the grounds of the decision."

Reason and natural justice alike manifestly forbid that where six of the seven Justices deny the major premise of the syllogism, and where six of the seven deny the minor premise also, they should nevertheless concur unanimously in the conclusion which is established only by that very syllogism.

Reason, natural justice and the simple truth alike require that at least a majority of the Judges should concur in the grounds on which a case is decided, and the Constitution expressly secures such requirement.

Take, now the final decision for the two Newmans. After declaring that there was no fraud and that the partnership articles had been executed by the deceased partner and were binding on him and on his estate, it became necessary to decide whether the language of the articles authorized the executor to transfer, as he secretly did on September 6, 1890, the deceased partner's interest in the firm to the two Newmans. In the part of the decision signed by the Justices Garoutte, McFarland and Van Fleet, this is expressly made one of the necessary grounds of the decision. In the part signed by the Justices Beatty, Temple and Henshaw it is declared to be "of course the main question in the case" (see the Appendix, p. 61).

It is on this, "the main question in the case," that the Justices taking part in the decision have divided, three and three. Three of them, namely, Charles H. Garoutte, Thomas B. McFarland and Wm. C. Van Fleet, have declared that the language of the articles did authorize such transfer, and that it was therefore valid (see the Appendix, pp. 55-60). The other three,

namely, Wm. H. Beatty, Jackson Temple and Frederick W. Henshaw, have declared that the articles did not authorize such transfer and that "the transfer to the Newmans was unauthorized and void."

Here, then, upon an essential ground of the decision, there is lacking a "concurrence of four Judges" (see the Appendix, pp. 67-70 and p. 74).

In the part of the decision signed by the Justices Beatty, Temple and Henshaw, it is, however, declared that, although the secret sale made by the executor was, as they say, "unauthorized and void," it was afterward made good by *estoppel* and by *ratification* (see the Appendix, pp. 71-75). But this declaration of an *estoppel* and a *ratification* was concurred in by only three Justices, namely, Wm. H. Beatty, Jackson Temple and Frederick W. Henshaw.

In the part of the decision written by Wm. H. Beatty, the Chief Justice, the two points last mentioned are declared to be "the questions upon which the decision of the appeal necessarily depends" (see the Appendix, p. 67).

Therefore, upon an essential ground of the decision, an essential element of the judgment, which its authors themselves declare to be "the questions upon which the decision of the appeal necessarily depends," the final decision for the Newmans lacks "a concurrence of four Judges."

The authors of the decision doubtless intended to deliver something which would at least appear to be a final decision of the case for the two Newmans. In dividing three against three upon what they themselves have declared to be "the main question in the case," it may have been their purpose to make their decision

look less like a put-up job. It may have been a mere accident. It may have been due to that blindness which, it has been said, God casts upon great criminals in order that justice may overtake them. It is possible that in making the decision its authors did not have in mind the necessity of a "concurrence of four Judges" on the grounds of the decision. But on Nov. 25, 1895, I, as the plaintiff in the case, pointed it out to them in a printed petition and asked that the decision be set aside and that, as required by the Constitution, "all the Justices qualified to sit in the cause shall hear the argument." But if the decision had been set aside and an argument allowed, the unspeakably base treachery and fraud and villainy of "Mr. Justice Harrison" would have been publicly set forth. So on December 5, 1896, the petition was denied, without giving any reason.

Here, for the benefit of the two Newmans and to cover the fraud and treachery and villainy of their confederate "Mr. Justice Harrison," there was another deliberate and intentional violation of natural justice and of the Constitution of the State.

And the legal effect is that the final decision for the two Newmans is not a judgment of the Supreme Court of California, but is, as it ought to be, utterly void. The case is still pending in the Supreme Court and all hearing and consideration and lawful or rightful decision of it is denied.

In the case against the two Newmans, both the principles of natural justice and the express guaranties of the Constitution have been deliberately, intentionally and corruptly violated. The right to a hearing of the case, the right to argue the case, was never waived. It was most foully and wickedly struck down by disbar-

ring the attorney and striking the brief from the files. The right was again claimed in October, 1895, (see pp. 300-301 above) and was again foully and wickedly denied. It was again claimed in the petition filed after the final decision, the petition denied on October 5, 1896. And the corrupt and wicked motive with which this right has been so denied has been to shield and uphold the treachery and fraud and unspeakable villainy of "Mr. Justice Harrison." The right to a speedy decision was also denied, and from the same evil motive. The case was a simple, plain case. It imperatively demanded a speedy decision. All that was needful to a speedy decision was honesty and sincerity in the Justices. By the disbarment of the attorney and striking his brief from the files the case was thrown over from January, 1895, to August, 1895, about seven months. It was then, under the false pretense that it had been submitted for decision, kept in Department Two of the Court for more than seven months more. Afterwards it was kept in the same way in bank for more than seven and a half months longer. That this delay was for no honest purpose is proved by the character of the decision at last filed on November 5, 1896. Why, then, was the delay? It was to wear out the dead partner's family. It was to wear out their attorney struggling under deprivation of his means of livelihood and the false brand of criminal so foully and wickedly put upon him by the disbarment. It was to divert the attention of the public from the great crime that was being committed. It was to shield and cover and uphold the treachery and fraud and unspeakable villainy and baseness of "Mr. Justice Harrison." And, as shown above, the right to a decision having a concurrence of four Judges, was also denied, and manifestly from the same evil motive.

5. *The Corrupt Suppression of an Unanswerable Ground of the Appeal.*

In the plaintiff's brief on file in the Supreme Court the first stated of the grounds of the appeal is that the decision of the Superior Court was, in the words of the statute, "against law," because ordering a judgment in favor of the two Newmans, while their own answer on file showed the plaintiff entitled to judgment against them for \$662.40 at the very least. The brief pointed out that where a decision is so "against law," the Superior Court is bound to grant the motion to set aside the decision and allow a new trial, and that if it refuses, the Supreme Court must reverse the order of refusal.

In the brief this point is stated clearly and a long list of decisions of the Supreme Court of California is given, showing conclusively and unanswerably that on this ground alone the plaintiff was entitled to a decision of the Supreme Court in his favor reversing the order appealed from.

The authors of the decision, finding this ground of the appeal conclusive in favor of the plaintiff and unanswerable, dishonestly ignored it, dishonestly feigned that no such ground of appeal was claimed.

Let us compare this with the decision of the appeal from the judgment (pp. 289-292 above). On that appeal the ruling was that the judgment appealed from was unlawful. But the Court below had made no express decision declaring upon what facts the judgment was based. The only facts that the Superior Court could be deemed to have established by its decision were therefore such as its judgment contained impliedly;

i. e., such facts only as would support *such a judgment*. That judgment having been declared illegal, and being necessarily set aside even in the act of modifying it, the case was left without any decision upon any fact in issue. To state this in another form, the Court ruled that no decision of the questions of fact could support such a judgment; from this it necessarily followed that no decision of the facts had been made. The Court, therefore, ought simply to have reversed the judgment. But a reversal of the judgment would have left the plaintiff entitled to a trial of the case anew in the Superior Court. And therefore, instead of reversing the judgment, the six Justices ordered it modified so as to give Mr. Levinson's estate on \$662.40.

The decision of the appeal from the judgment and the dishonest suppression of the first of the assigned grounds of the appeal from the order refusing to set aside the decision and allow a new trial, were acts of the same nature. The one shows a motive to force a final decision for the two Newmans. The other is indubitable proof of the corrupt and dishonest intention of its authors to the same end. Each tallies with the other and with the other rulings in the case.

6. *The Lie That the Newmans' Inventory and Appraisement Showed \$20,790.88 as the value of Mr. Levinson's Interest in the Firm.*

The only part of the Newmans' inventory and appraisement which even pretended to show the value of Mr. Levinson's interest is that called by them the

"balance sheet." The "balance sheet" is in the record of the case in the Supreme Court. The value of Mr. Levinson's interest in the firm, according to the Newmans' inventory and appraisement, has to be found by putting together various items shown on the "balance sheet," and a bare inspection of the "balance sheet" shows the value of Mr. Levinson's interest in the firm, as there indicated, to be \$21,389.10. No such sum as \$20,790.88 appears in any part of the Newmans' inventory and appraisement nor can any such sum be derived from it or from the "balance sheet." The plaintiff's brief clearly points out all this, and states it as one of the facts showing that the executor and Ralph C. Harrison, in making the secret sale of Mr. Levinson's interest to the Newmans for only \$29,790.88, were only the tools of the Newmans, since a bare inspection of the paper of summaries, the "balance sheet," on the showing of which they were professing to make the sale, would have shown the value, according to the Newmans themselves, to be \$21,389.10.

In the decision filed November 5, 1896, this point is met by deliberately lying about it.

With deliberate lying, it is twice declared in the part purporting to have been written by Charles H. Garoutte, that the inventory and appraisement made by the two Newmans showed the value of the deceased partner's interest in the firm to be \$20,790.88. The passages in which that lie appears may be seen on pages 52 and 53 of the Appendix.

7. *The Stupendous Lie That if the Accounting Sued for Were Allowed It Would Result in a Balance to Be Paid to the Two Newmans.*

A similar statement had been made by the Judge of the Superior Court on the trial.* The plaintiff's brief in the Supreme Court takes up that statement of the Superior Court Judge, and demonstrates the complete absence of even a particle of evidence in its support. The final corrupt decision of the case for the two Newmans, ignores that demonstration and substitutes monstrous lies in its place. The lies here referred to as uttered in the part purporting to have been written by Charles H. Garoutte, may be seen on p. 54 of the Appendix, where, for example, it is said that, "as said by the trial Judge, upon an accounting the sum realized by the legatees would fall far short of the amount actually paid by the surviving partners to them." In the part written by Wm. H. Beatty, the Chief Justice, the lies may be seen on page 71 of the Appendix, where, for example, it is said that "The evidence seems to be without conflict, and at least is strongly in favor of the respondents, that the appraised value put by the Newmans upon the interest of their deceased partner was greater than its actual worth."

Those statements in the decision are not mere error; they are deliberate and outrageous lies. There is not a particle of any such evidence as their authors assert, and the decision was written with a full knowledge of that fact. *Not so much as a particle of evidence was produced as to what goods were valued or what values were put down.* And the Newmans openly avow that

* See the Appendix, p. 4.

they took the good will of the business, an asset of immense value, and allowed nothing for it. And, besides, there were before the authors of the decision all the facts mentioned on pages 21-29 above, and also those mentioned in divisions 15, 27 and 28 of this chapter.

The falsehood of the statement that "upon an accounting of the sum realized by the legatees would fall far short of the amount actually paid by the surviving partners to them," is a lie so monstrous that its lying character is manifest at a glance. Why have the Newmans resisted the accounting if it would result in a balance to be paid to them?

These falsehoods of the six Justices as to the facts of the case were uttered only to deceive the public. As a matter of law, it makes no difference as to the plaintiff's right to an accounting, whether the amount paid by the Newmans was the value of Mr. Levinson's interest in the firm or not. The plaintiff's brief sets forth the decisions—decisions of honest Judges such as Lord Eldon, showing that wherever the sale of a dead partner's interest in a firm is for any reason void, his representative has the legal right to an accounting, irrespective of whether the sum received was its full value or not.

8. *The Lying Misrepresentation and Dishonest Treatment of the Ground that the Partnership Articles Were Not Executed by Mr. Levinson, but Fraudulently Obtained by the Two Newmans.*

This is one of the particular points in respect to which, in the decision disbarring the attorney, pledges

were laid upon the Court to decide the case in favor of the two Newmans, as shown on pages 233-236 above.

In the plaintiff's brief all the evidence is set forth, showing Mr. Levinson's mental condition when the Newmans obtained his signature to the articles, and their conduct in having the articles prepared solely from their own directions (as stated on pp. 17-20 above).

In the plaintiff's brief the point is made that Mr. Levinson's incapacity consisted in his want of will power, caused by his disease. And the authorities are given, showing that capacity to make a contract requires not only intelligence or power to understand, but also will power, *i. e.*, power to stand up for one's self against the will of the other party or parties to the contract—that although one may have intelligence, yet, unless he has such will power, any instrument he may subscribe for another will be in fact only the act of that other.

The brief also shows, giving the authorities, that capacity to make a last will and testament does not require such will power as is necessary for capacity to make a contract, because in making a last will and testament one does not need to stipulate for anything for himself, and is not dealing with any one adversely interested.

The brief also shows that Mr. Levinson's will, dated twenty-eight days after the articles, was evidently influenced by the two Newmans, but that even that will shows positively that Mr. Levinson did not contemplate that the Newmans were to take his interest in the firm after his death. The brief also shows that Mrs. Levinson and her daughters had taken no part in the probate

of the will, and had neither the means nor any sufficient pecuniary interest to question Mr. Levinson's testamentary capacity.

In the final corrupt decision for the two Newmans, its authors lie first about the point made by the brief. They lyingly pretend that the point urged by the plaintiff was that Mr. Lévinson had not intelligence to understand the articles. Then, while impudently and villainously lying as to the ground urged by the plaintiff's brief, they most scandalously and infamously lie in their treatment of the facts.

The particular passages of the decision here referred to, are (in the part purporting to have been written by Justice Garoutte) the language beginning with the second line of page 55 of the Appendix and extending to the end of the paragraph. In the part written by Wm. H. Beatty, the Chief Justice, they are the first paragraph (Appendix p. 61) and also the last four lines of p. 61 and the first ten lines of page 62 of the Appendix.

In the treatment of this ground of the appeal the decision contains in the passages just quoted the following falsehoods, all of which are deliberate and outrageous lies :

(1.) The impudent lie that the incapacity of Mr. Levinson claimed by the appellant was a want of intelligence.

(2.) The dishonest suppression of the plaintiff's claim that Mr. Levinson was lacking in the will power necessary to his making such a contract with the Newmans. They could have suppressed this ground for no other reason than that they found it unanswerable.

(3.) The lying misrepresentation of the facts. The gross bad faith in the treatment of the facts. The dishonest suppression of the fact that the articles of partnership had been prepared by the Newmans.

(4.) The lie that "there is substantial evidence" in favor of Mr. Levinson's capacity. There is not a particle of any such evidence, and the authors of the decision well knew that fact while making their decision.

(5.) The extreme dishonesty, the spirit of lying, manifest in the sentence, "As a salient circumstance bearing upon Mr. Levinson's mental capacity at that particular time, it may be noticed that some few days thereafter he executed his last will and testament, the will under which this administrator is now acting."

(6.) The lie that after Mr. Levinson's return from Europe "for several months and up to the time of his death he gave his personal attention to the business of the firm as he had always done in the past." The gross falsehood and dishonesty manifest in the sentence, "He lived more than one year thereafter, and during a portion of that time was able to attend to business." These assertions, indeed, show that their authors carefully culled the record to search for testimony that might favor the Newmans. They are based on an assertion of William J. Newman, shown at page 309 of the record. But Newman does not pretend that Mr. Levinson, after his return from Europe, "gave his personal attention to the business of the firm as he had always done in the past." He says "he was ill a great part of the time" and that "he was attending *to the same business as he always did before.*" He does not pretend to say how much of the time he was attending

to business, or with what degree of efficiency, or that in his illness, even when he could come to the store, he was doing any more than merely to be around, assisted and humored by the employees. How false, how full of dishonesty, is the pretense that this throws any light on his mental capacity a year before! What a lie to say that "for several months and up to the time of his death he gave his personal attention to the business of the firm as he had always done in the past"!

(7). The lie that "for two years after the death of Levinson" there was no question of his mental capacity—the lying assertion of "the charge of undue influence by his surviving partners being an evident afterthought." There was no occasion to raise that question until the effort to compromise had failed, and nothing less than gross bad faith could prompt the making of any adverse observation upon the failure to raise the question before that time. But as a matter of fact, Mr. Levinson's mental incapacity at the date of the articles and the fact of the Newmans taking undue advantage of him was stated in the very first paper ever filed by Mrs. Levinson and her daughters; namely, in their petition filed October 11, 1890, to correct the inventory and appraisement filed by the executor. This is shown at page 133 of the record in the Supreme Court and is stated on page 37 of this paper.

(8.) The lying statement that there is no evidence that the Newmans were contracting with the expectation of being the survivors, that "we do not find that the illness [of Mr. Levinson] was deemed mortal." These statements in the decision are deliberate lies. The evidence is full and uncontradicted that Mr. Levinson was at the time in continual danger of dying by

suicide, and was being watched to prevent him from committing suicide. See pages 17 and 18 of this paper.

(9.) The lying statement—an impudent lie about the law—that Mr. Levinson's mental incapacity is not one of the issues of the pleadings, the complaint and the answer. The complaint alleges the non-existence of any written partnership contract. The answer denies this and alleges the execution of the articles in question. By the settled law of the State, by a simple section of the Code, familiar to every California lawyer, this placed in issue the execution of the articles of partnership in question and every fact, such as the mental incapacity of any party, that would tend to prove or disprove their execution.

(10.) The lie that Mr. Levinson's "mental status does not appear to be an element of the case that attracted serious attention at the trial"—the lie that "it does not appear that any such question was tried" [the question of the fraud of the Newmans in getting Mr. Levinson's signature to the articles in question.] Both these statements are deliberate lies. That which the Justices say "does not appear" does appear in the record and as clearly and as fully as it could appear in any case and in the only way it could lawfully appear.

The six Justices, who expressly joined in the decision, have, indeed, been carried by their lying as to Mr. Levinson's mental capacity into a ludicrous predicament. Three of them, Garoutte, Van Fleet and McFarland, declare positively, and profess to reason it out, that the partnership articles did give the Newmans the right to purchase Mr. Levinson's interest in the firm

after his death. The three others, Beatty, Temple and Henshaw, declare with equal positiveness, and profess to reason it out, that the partnership articles did not give any such right. All six of these Justices declare that Mr. Levinson had mental capacity to understand and that he did understand the partnership articles. From this it appears that the three Justices, Garoutte, McFarland and Van Fleet, deem the Justices, Beatty, Temple and Henshaw, lacking either in mental capacity or ability to tell the truth, or both. And it appears also that the Justices, Beatty, Temple and Henshaw, hold the opinion that the Justices, Garoutte, Van Fleet and McFarland, are lacking either in mental capacity or ability to tell the truth, or both. If the Father of Lies has a sense of humor he must indeed be amused at such an exploit.

9. *The Dishonest Treatment of the Ground That the Partnership Articles Did Not Constitute a Contract Giving the Newmans a Right to Take Mr. Levinson's Interest in the Firm.*

This is in the part of the decision purporting to have been written by Justice Garoutte. In this part it is asserted that the secret transfer of Mr. Levinson's interest in the firm to the Newmans was the right of the Newmans given them by the articles of partnership as a contract.

The plaintiff's brief shows that the language of the articles neither states any price nor prescribes any method for arriving at the price for which the surviving

partners might take the interest of a deceased partner. The brief also states the settled rule and principle of law that the fixing upon a price or of some standard for fixing a price is an element absolutely essential to constitute a contract of sale or a contract to sell, and quotes extensively the authorities, all of which declare that in the absence of such agreement as to the price, there is no contract binding on either party or giving either party any right.

In the part of the decision last mentioned the rule or principle of the law of contracts which is decisive of it, is studiously and with manifest dishonesty avoided in most of the discussion, and where nearest approached is deliberately lied about by such expressions as "The actual value of a piece of merchandise can be determined"—"that a sale to the surviving partners in case of the death of one of the firm was in the minds of all partners when the contract was made does not admit of doubt." This is the language of the very men who at the same time did say: "As a salient circumstance bearing upon Levinson's mental capacity, it may be noticed that some few days thereafter he executed his last will and testament, the will under which this administrator is now acting in prosecuting this litigation." But as the plaintiff's brief points out, this very will, made, as they say, "some few days thereafter," provides for a continuation of the testator's interest in the firm to be held and carried on after his death for the benefit of his estate, showing affirmatively that the testator had no thought of "a sale to the surviving partners." The whole treatment of this ground of the appeal in this part of the decision displays extreme falsehood, and dishonesty of intention in its authors.

The Single Truthful Spot in the Decision.

It is on this point, which the decision states "is of course the main question in the case," that the three Justices, Wm. H. Beatty, Frederick W. Henshaw and Jackson Temple, dissent from the other three. In their dissent they state the truth with clearness, saying (See the Appendix pp. 69, 70, 74).

"The testator's contract did not determine the amount of the consideration to be rendered by the survivor for his interest, and the exercise of a further act of discretion, judgment and assent was necessary to ascertain the amount * * in making the adjustment with defendants the executor necessarily supplied the missing terms of his testator's contract by the exercise of his own will and discretion."

"The provisions of the articles for the transfer of Levinson's interest were incomplete in that no price was fixed and that no disinterested person was named who should fix the price."

"We are forced to believe in this case that the articles of copartnership failed to provide effectually for a transfer of the interest of Levinson's estate in the copartnership to the surviving partners."

"For the lack of such method [method of arriving at a price] the transfer to the Newmans was unauthorized and void."

This admission of the three Justices, Beatty, Henshaw and Temple, that "the articles of copartnership failed to provide effectually for a transfer of the interest of Levinson's estate in the copartnership to the surviving copartners," and that "the transfer to the Newmans was unauthorized and void," and the reasons they give for it constitute the single and only truthful spot in the decision. And if given its rightful effect, this admission would of itself have entitled the administrator of Mr. Levinson's estate to everything claimed by him in the

suit. But, the three Justices (Beatty, Temple and Henshaw), in order to deny and prevent that rightful effect have set up the infamous lies about the law which are pointed out in the divisions 10, 11, and 12 of this chapter.

The Lies About the Law.

10. *The Outrageous Lie About the Law of Estoppel.*

These three Justices, Wm. H. Beatty, Jackson Temple and Frederick W. Henshaw, say that "the transfer to the Newmans was unauthorized and void," but that it was afterwards made good by estoppel. They assert that the *estoppel* was created by the act of Mrs. Levinson and her daughters in obtaining from the executor on November 13, 1891, by means of a decree of partial distribution obtained by them from the Probate Court, \$9,000 of the money the executor had received from the two Newmans, in conjunction with the fact that the sum which the executor had received was the fair value of the interest of Mr. Levinson in the firm, and that the transfer to the two Newmans was not fraudulent, and the further fact that Mrs. Levinson and her daughters, at the time they so obtained that money from the executor, knew that he had obtained it from the two Newmans as the price of a sale made by him of Mr. Levinson's interest in the firm to the Newmans. I will show presently that the three Justices lie most shamefully in asserting such to be the facts. But here I wish

to point out that even if the facts had been all that the three Justices assert, still, to say that such facts constitute an estoppel is to lie most scoundrelly about the law. Their language setting up so infamously false a pretense may be seen on p. 71 of the Appendix.

The law of estoppel is thoroughly settled in this State, and indeed in every State of this nation. And here are some of its essential elements as laid down and applied over and over again in the decisions of the Supreme Court of California.

In *Watson v. Sutor* (86 Cal. 526), the Supreme Court said :

“Without the element of deceit there can be no estoppel.”

In *Davis v. Davis* (26 Cal. 40), the Supreme Court said :

“In order to create an equitable estoppel there must be an admission intended to influence the conduct of the man with whom the party is dealing and actually leading him into a line of conduct which would be prejudicial to his interest unless the party estopped be cut off from the power of retraction.”

In *Farish v. Coon* (40 Cal. 51), the Supreme Court said :

“Equitable estoppels are founded solely on the theory that to permit the party to maintain the right which he asserts would operate as a legal fraud on his adversary.”

In *Barnhart v. Fulkerth* (93 Cal. 499), the Supreme Court said :

“One of the necessary elements of the estoppel is that the party setting it up must have been

actually induced to do a certain act by the conduct or directions of the party sought to be estopped."

In *McCormick v. Orient Ins. Co.* (86 Cal. 263) the Supreme Court said:

"An essential element of estoppel * * is that one party should have relied upon the conduct of the other and been induced by it to put himself in such a position that he would be injured, if the other should be allowed to repudiate his action."

In Pomeroy's Equity Jurisprudence, Section 804, it is stated that to constitute an estoppel there must have been voluntary conduct by the party estopped upon which the other party has relied in good faith and by which he has been led to change his position for the worse.

Now, how could there be any possibility of estoppel from such facts as the Justices Beatty, Henshaw and Temple assert?

The executor had sold Mr. Levinson's interest in the firm to the two Newmans on September 6, 1890. On that day he received half the price. He received the other half on or before February 26, 1891. All this is conceded. All that the Newmans had done in paying the money to the executor had been completed many months before Mrs. Levinson and her daughters had applied for a cent of it. When once the Newmans had paid the money to the executor they had no further control over any of it. They had paid it voluntarily and could not in any event recover it. They knew when they paid it that Mrs. Levinson and her daughters would not consent to their receiving Mr. Levinson's interest in the firm for any such sum. And at the very time the order for the

\$9,000 from the executor was obtained from the Probate Court the Newmans' attorneys were present and were then told what they knew all along, that Mrs. Levinson and her daughters would not consent to any transfer of Mr. Levinson's interest in the firm to them for any such sum. And at the very time the order for the executor to pay the \$9,000 was made the Newmans had in their pockets, out of Mr. Levinson's interest in the profits of the firm produced between his death and that time, no less than \$22,288.64, a great deal more money than all they had paid to the executor. All this is clearly pointed out in the plaintiff's brief and was well known to the Justices Beatty, Henshaw and Temple when they wrote their decision. Now, where is the deceit practiced by Mrs. Levinson and her daughters on the Newmans? "Without the element of deceit there can be no estoppel." Where is there is any conduct of Mrs. Levinson and her daughters leading the Newmans to any course of conduct on their part? Where is the fraud of Mrs. Levinson and her daughters on the Newmans? Where is this "one of the necessary elements of the estoppel"?

One of the decisions shown to the Justices was *Fledge vs. Garvey* 47, Cal. 377. There a guardian—whose position is precisely like that of an executor or administrator—had made a void sale of land, and the ward had with full knowledge of the facts received the purchase money. The Supreme Court declared that there was no estoppel and said:

"The purchaser at the guardian's sale paid the purchase money to the guardian, but he had no control over or responsibility for its application by the guardian, and of course cannot aver that in

making the purchase he was influenced in any manner by the subsequent application of the purchase money."

Many other decisions to the same effect were shown these Justices. They proceeded with their eyes open. They deliberately and villainously and most basely and wickedly lied about the law.

11. The Lie That the Newmans Had the Right to Demand Back the Money From the Executor.

The particular falsehood of the decision here referred to may be seen on page 74 of the Appendix. It is a deliberate and most villainous lie about the law, with an attempt to conceal it by impudently lying about the facts. It is a settled and familiar rule of law, which has been applied over and over again by the Supreme Court of this State for more than thirty years, that no person has a right to recover money which he has paid voluntarily and with a knowledge of the facts. The Justices, by saying "the money was not voluntarily paid after the protest was made, but was forced by the legatees," show that they had this rule of law in mind while writing their decision. The sentence, "The money was not voluntarily paid after the protest was made, but was forced by the legatees," is an impudent and villainous lie about the facts. The money was not paid at all by the Newmans, not a cent of it, "after the protest was made," or after Mrs. Levinson had applied for the \$9,000. The money had all been voluntarily paid by the Newmans to the executor many months

before. The payment of the money by the Newmans was never "forced by the legatees," but was paid voluntarily and without so much as the knowledge of the legatees. All this the Justices well knew while writing their decision. Besides, as already mentioned, the Newmans then had in their hands a great deal more money belonging to Mr. Levinson's estate than all they had paid to the executor—a fact about which the authors of the decision are dishonestly silent. If the Newmans could have taken the money back from the executor, why did they not do so at the time of "the protests of the executor and the two Newmans"? Were the Newmans then "forced by the legatees"? They did not take the money back because they were not entitled to a cent of it either legally or morally. The executor could not have paid it to them without being punishable for contempt of the Probate Court, and for embezzlement of the money. The assertion that they had any right to receive back the money they had paid, either legally or morally, is a deliberate, a most outrageous and villainous lie about the law and about the facts. See the clear statement of the law in *Fledge vs. Garvey*, quoted on pages 341-2 above.

The extreme dishonesty of setting up such a ground for the decision is well illustrated by the freedom with which the executor was allowed to pay, on September the 11th, 1890, out of the money he had received from the Newmans, the sum of \$4,222.00 to a creditor of the Levinson estate. From the time he made that payment, it was of course impossible for him to return to the Newmans the money he had received from them. No objection was made to that payment, and for the plain reason that the Newmans and their attorneys

fully understood that from the time they paid the money to the executor, it was none of their business what he should do with it. *No pretense is made that that payment created an estoppel, and plainly for the same reason.* Why, then, did the executor and the Newmans oppose the payment of a part of the money to the deceased partner's family, when such payment was requested more than a year afterwards? The answer is plain. The sole and only motive was to oppress and cripple the dead partner's family, to subdue them by withholding their own from them and reducing them to penury.

The reader will notice also the scoundrelly trickery with which the falsehoods of the decision last mentioned are uttered. It is the same trickery of *covert assumption* which was so freely indulged in in the judgment of disbarment, *the covert and outrageously false and dishonest assumption* that the money received by Mrs. Levinson and her daughters from the estate in November, 1891, "was forced by the legatees" *from the Newmans.* This is the *covert assumption* of an outrageous falsehood. The money was then in the estate of John Levinson, and was legally and morally a part of that estate. The Newmans had no right to it or control over it, either legally or morally. It "was forced" from the executor, not from the Newmans.

12. *The Outrageous Lie About the Law of Ratification.*

The particular falsehood of the decision here referred to may be seen on page 75 of the Appendix. It is an outrageous lie about the law of ratification. The three

Justices themselves say, "The transfer to the Newmans was unauthorized and void." It is the settled law that a void act cannot be ratified. It is the settled law, too, that a ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified; and the only way by which the executor could have been given authority to make the transfer to the Newmans would have been a written petition to the Probate Court and an order of the Probate Court authorizing the transfer. And the Statute of this State (C. P. Sec. 1517) says:

"No sale of any property of an estate of a decedent is valid unless made under order of the Superior Court. * * All sales must be under oath reported to and confirmed by the Court before the title to the property sold passes."

The unspeakable dishonesty of the authors of the decision in making the assertions last stated, is shown also by the decision of the same Court in bank on June 9, 1893, in the case of *Wallace vs. Sisson*. That decision may be seen in Vol. 33 Pacific Reporter at p. 496. The case was as follows: Mr. Wallace, one of the partners in the firm of Sisson, Wallace & Co., died. His widow, as administratrix of his estate, made, through the Probate Court, an open and legal sale of his interest in the firm to the surviving partners. In making the sale she protested that the surviving partners should have made a further allowance for the good will of the business and for an interest in certain contracts which they claimed did not belong to the firm. She, however, made the sale and received the purchase price. The money so paid was thereupon distributed to the

heirs by the Probate Court, and was received by her and the other heirs. Afterwards she and the other heirs sued the surviving partners for a full accounting. The Supreme Court decided that she was entitled to the accounting, and without paying back a cent of what had been received. The Justices Wm. H. Beatty, Ralph C. Harrison, Charles H. Garoutte and Thomas B. McFarland all took part in that decision and there said :

“ If it be true that there was concealment or misrepresentation, that all that was valuable was not brought into the transaction, that something was withheld that should have been estimated, can it be said that before she can have the wrong corrected she must refund to the defendants all that she has received, when she could not receive, hold, own and control what she had parted with, and which defendants retained, and that a court of equity cannot compel them, without such rescission and surrender, to account for that in which she had an interest, and which was not brought into the accounting upon which the settlement was had ? Even if it were necessary to set aside the agreement, it could not be necessary that the money paid should be refunded. It is not claimed that defendants were in any manner deceived or wronged, or that they have paid money that plaintiffs were not in any event entitled to. The law does not require idle or unnecessary acts to be performed, and surely it cannot be necessary that plaintiffs should put back in defendants' hands the money they have in order that they may recover it back with other moneys in addition thereto. These views are fully sustained by the authorities [citing authorities]. But in strictness this is not an action for a rescission, nor is a rescission necessary.”

The Suppression of Wallace vs. Sisson From the California Reports.

The decision in *Wallace vs. Sisson*, though made by the Court in bank, and though clearly a very important decision upon the rule of law stated in it in the passage above quoted, *was not placed in the California Reports.*

The reason for this is probably similar to that for which the decision in *Heckman vs. Swett* was mutilated (as stated on pages 60-62 above), namely, to avoid having it cited as an authority in the suit of the administrator of John Levinson's estate against the two Newmans, which was then being taken on appeal to the same Court.

But this decision of the case of *Wallace vs. Sisson* is cited in the plaintiff's brief, with many other authorities showing the Newmans entitled to no repayment. All these authorities were clearly pointed out to the authors of the decision for the two Newmans.

The Inability to Cite Any Authority.

The Justices W. H. Beatty, Jackson Temple and F. W. Henshaw could and did cite authorities in deciding that the language of the partnership articles gave the Newmans no right to take the interest of their deceased partner, and they could cite authorities for their ruling in *Wallace vs. Sisson*. But they do not even pretend to cite any authority for what they so scoundrelly assert as the law of estoppel, and as the law that one voluntarily paying money with a knowledge of all the facts has a right to demand it back even though it is far

less than what he is at the time bound to pay over to the same person, or as to the law of ratification. Though they make this the very turning-point of the whole case, they do not even pretend to cite authority. This is because they could not cite authority, and they knew it. They were deliberately and most outrageously and wickedly lying about the law.

I now again invite particular attention to the three points last mentioned, namely, the pretense that the Newmans had a right to demand back the money they had paid to the executor; the pretense that the receipt of part of that money by Mrs. Levinson and her daughters under a decree of the Probate Court partially distributing the Levinson estate made the secret and void sale valid by ratification; and the pretense that such receipt of part of that money by those legatees was an estoppel of the administrator's right to have an accounting. Those pretenses, as set forth in the final decision, may be seen on pages 71, 74-75 of the Appendix. There is not an American or an English lawyer, worthy the name of lawyer, who will not see even at a glance that every one of those pretenses is an outrageous lie about the law.

The Lies About the Facts.

The three Justices, Wm. H. Beatty, Frederick W. Henshaw and Jackson Temple, in order to form a lying basis for their law of estoppel, also lie most impudently and villainously about the facts. Let us take note of some of these particular lies.

13. *The Impudent Lie That the Answer Filed by the Newmans in the Probate Court in November, 1891, Disclosed the Sale of Their Deceased Partner's Interest in the Firm to Them.*

They assert (and, as if seeking to strengthen the language, they put it in italics) that the language shown on pages 38-39 above, in an answer of the Newmans filed November 20, 1890, in the Probate Court,—they assert that that language was “that executor Raveley had accepted from the surviving partners their notes for \$20,790.80 in full payment for his testator's interest in the copartnership.” Their assertion is, as an inspection of the language will show, utterly false. The language of that answer states only that *the Newmans had executed the notes* “in full payment and discharge of the interest of said decedent in said copartnership,” etc. It said nothing whatever as to *what the executor had done*. This distinction is obvious and is illustrated by the decision of the Supreme Court of this State in *Jamison v. Simon*, 68 Cal. 17, where it was ruled that to say that a seller of goods has delivered the goods to the buyer is not saying that the buyer has received and accepted the goods; that to say that the seller has delivered the goods says nothing as to the position taken by the buyer. For all that that answer disclosed, the executor might have received the notes only on account, leaving the question open as to whether anything more was to be obtained. This was what Mrs. Levinson and her daughters supposed was the case and what the executor continued to represent as the case. See on p. 31-32 above the language of the executor's answer filed in November, 1891, to the peti-

tion of Mrs. Levinson and her daughters for part of the money in his hands. Now, the plaintiff's brief points out that the answer of the Newmans *did not state any act or intention of the executor*. The three Justices, in their false assertion on this point, have deliberately and intentionally falsified the plain truth.

Besides, Mrs. Levinson and her daughters had the promise of Ralph C. Harrison that Mr. Philbrook, the attorney whom they had employed, "should be notified of any step which should be taken in regard to the interest of the estate in the partnership," and the fact that no notice or information was given was a continual assurance that no transfer to the Newmans had been made. All this was before the Justices while writing their decision.

This falsehood of the Chief Justice, Wm. H. Beatty, concurred in by Justices Temple and Henshaw, was uttered by them with evil motive. As they well knew, that answer of the Newmans was not filed until seventy-five days after the transfer had been made to them by the executor; and even if it had fully disclosed all that the three Justices assert, the sole effect of the disclosure would have been to enable Mrs. Levinson and her daughters to demand the removal of the executor a year earlier than they did. The three Justices, in fact, confess this in another part of the decision, in trying to make out that the secrecy of the transaction was harmless (see the Appendix, p. 65).

The reader will notice the mingled trickeries of *covert assumption* and *irrelevant argument* accompanying the falsehoods of the decision last mentioned. If the Newmans' answer filed in the Probate Court had in fact disclosed the sale, the only possible effect would

have been to exhibit themselves as more brazen. The disclosure would have been in every other respect without the least importance. Behold, then, the trickery of Wm. H. Beatty, the Chief Justice, in *covertly assuming* that such a fact would have been important.

14. The Lie That Mrs. Levinson and Her Daughters, When They Received the Money From the Executor, Knew of the Transfer to the Newmans.

The three Justices, Wm. H. Beatty, Frederick W. Henshaw, and Jackson Temple, also assert that when the order for the \$9,000 was obtained by Mrs. Levinson and her daughters "the circumstances under which it had been paid over to the estate and the claims of the Newmans in regard thereto were well known to them." In making this assertion they deliberately and villainously lied. There is not a particle of evidence in support of their assertion; the proof of the very contrary of their assertion is full and without contradiction, and they well knew this while writing their decision. Indeed, the very answer with which the executor opposed the order of partial distribution—an answer which the Newmans themselves urged by their attorneys M. S. Eisner and E. R. Taylor—that answer did not pretend that the money had been received upon a transfer of the interest of the deceased partner to the two Newmans (See the language of the answer shown on pp. 43-4 above). And that answer was before the Justices while writing their decision.

Accompanying this falsehood in the decision, there is the *covert assumption* that if Mrs. Levinson and her daughters had known of the sale when they received the money from the executor under the decree of partial distribution, such receipt of the money would have constituted an *estoppel* and a *ratification of the sale*. As pointed out above, it is the *covert assumption* of that which is only an outrageous lie about the law. The importance, and the only importance of the fact that knowledge of the sale was withheld from Mrs. Levinson and her daughters is in the evidence it furnishes of a fraudulent intent on the part of the executor and Ralph C. Harrison and the Newmans.

15. The Lie That the Price Paid by the Newmans Was Fair.

The setting up of the particular falsehood here referred to may be seen on page 71 of the Appendix.

The deliberate falsehood of these assertions that the price was fair, are manifest for the following reasons: There is not a particle of evidence in support of such an assertion. Besides, the Justices making these assertions avow that "the transfer to the Newmans was unauthorized and void," and was without support in the partnership articles. They avow that it was solely a transfer by the executor on September 6, 1890. That being so, the price could not be fair without being the value of the interest at that time. Now, William J. Newman himself testifies that between March, 1890, and the time of the transfer, the McKinley tariff bill increased the value of all the goods on hand, that "it

raised the profit on some to 200 per cent., and on some it raised the profit to 100 per cent., and all the way from 25 per cent. up." He also testifies that in the same period many goods were purchased on the credit of the firm and at a price allowing a large profit. Wm. J. Newman gave this testimony, not from any motive of frankness, but in an effort to excuse the small and trifling allowance made by him and his brother to their deceased partner's estate for profits earned in the eight months next before his death, in comparison with the enormous profits which the two Newmans themselves continually reaped and pocketed from the time they claimed their deceased partner's interest as their own. It was only in their effort to cover one fraud that a seam in their cloak parted revealing a greater fraud. Now, an allowance for an increase of only 100 per cent. on only the goods originally on hand would have added not less than \$62,226.25 to the value of Mr. Levinson's interest. In the same period the profits earned were something more than \$22,829.40, and thirty per cent. of that sum should have been added in arriving at the value of Mr. Levinson's interest. Nothing whatever was allowed for these profits nor for any increase in the value of the goods nor for the new goods. Still further, the enormous asset of the *good will* of the business was avowedly omitted. All this was before the Justices while writing their decision. In asserting that the price was fair, they have deliberately and outrageously lied.

16. *The Lying Treatment of the Fraud of the Newmans and of the Confederacy of Ralph C. Harrison and the Executor With Them.*

In the final decision for the two Newmans this ground of the appeal is, in the part purporting to have been written by Justice Garoutte, turned off with the following words (see the Appendix p. 54):

“Fraud is charged in the body of plaintiff’s bill, and upon that ground relief in a great measure is sought. But in the opinion of the trial Judge, Hon. W. T. Wallace, which opinion is set forth in the record, it is stated that there is no evidence whatever to support such a charge. And, after a careful examination of the evidence, we find nothing therein even tending to show the practice of any fraud upon the heirs and legatees of the dead partner. It follows that all question of fraud is out of the case.”

The rank dishonesty of turning off the decision of such a ground in such a case by the bare assertion that “after a careful examination of the evidence, we find nothing therein even tending to show the practice of any fraud,” is manifest. It is a maxim formed from observation extending through ages, that a falsifier deals in generalities. These three Justices either do not question the facts as stated in the plaintiff’s brief and established by the evidence there exhibited, and only assert that all those facts amount to nothing—“even tending to show the practice of any fraud”; or else they assert the facts to be as stated by their three associates, Beatty, Temple and Henshaw. In either view, their assertion is manifestly only a deliberate and gross and most villainous falsehood. If the three Justices thought they were speaking the truth, why did they not state the facts and rest their assertion on the facts? And why, except from the consciousness of

having perpetrated a falsehood too weak to stand alone, did they seek to bolster it up by saying that it is also "the opinion of the trial Judge, Hon. W. T. Wallace, which opinion is set forth in the record"?

A decision of the Supreme Court, the appellate court, should, of course, be based exclusively upon the facts of the case and the honest judgment of the Judges of the Supreme Court. And this is a truth so plain and fundamental that it must needs be recognized spontaneously by any intelligent person who is not morally rotten. An opinion asserted by the Judge from whose action the appeal is taken can have no honest place among the grounds of the decision of the Supreme Court. It cannot be used as part of the grounds for deciding the appeal without assuming in advance that the action appealed from was right, and thus denying the very right of appeal. But more than once the authors of the final decision for the two Newmans have dragged in such false support to bolster up their outrageously lying assertions. For instance, they say, "as said by the trial Judge"—"as the trial Court held." Those expressions were used for the same purpose as in the passage last quoted, "But in the opinion of the trial Judge, Hon. W. T. Wallace, which opinion is set forth in the record, it is stated that there is no evidence whatever to sustain such a charge." The use of those expressions is similar in principle to the conduct of their authors in putting a mass of new accusations into their decision disbarring the attorney, as pointed out on pages 124-126 of this paper.

The cunning reason for thus supporting "Hon. Ralph C. Harrison" by such expressions as "But in the opinion of the trial Judge, Hon. W. T. Wallace,

which opinion is set forth in the record, it is stated that there is no evidence whatever to support such a charge," is, however, to be recognized easily. It is because of a certain well known popularity which Judge Wallace had at the time among many well meaning and earnest people—a popularity which he had acquired by a long course of skillful playing to the gallery—as being a man who would oppose the evil practices of The Southern Pacific Company and their allies, if he only had the opportunity. It was the crafty trickery of bolstering up the decision with that popularity of "Hon. W. T. Wallace."

But, upon the question of the fraud, we have in the final decision for the two Newmans far more than the generalities and flat assertions and skillful trickery behind which the part of the decision purporting to have been written by Justice Garoutte so carefully hides. In the part written by Wm. H. Beatty, the Chief Justice, the details are given, the particular grounds upon which those generalities and flat assertions are based. And here we find a very revel in rank, self-conscious dishonesty upon dishonesty, and gross, specific, impudent and outrageous lies after lies. In this, the final decision for the two Newmans resembles the judgment of disbarment. The concurring opinion of Wm. H. Beatty, the Chief Justice, is like an index or table of contents of the other. He stands before his associates, a chief in villainy and wickedness, in every quality characteristic of the foul, degraded, malicious, cowardly scoundrel.

Some of the particulars in which this appears will now be pointed out.

So fully is Wm. H. Beatty, the Chief Justice, the index of the authors of the decision, that the spirit of malevolence in which the decision was written emanates freely in the words he uses. Take, for instance, the following expressions: "Mr. Philbrook, however, seems to think"—"the matters so vehemently and intemperately argued on the part of the appellant"—"the torrent of vituperation poured out upon Mr. Justice Harrison"—"Mr. Philbrook's tirade"—"Mr. Philbrook knows the meaning of a plain statement in plain English"—"Mr. Philbrook's suspicions"—"Mr. Philbrook has constructed his elaborate theory of fraud and corruption"—"the absurdity of this position"—"scarcely credible that a normal mind could regard them as evidence of fraud"—"rather too heavy a draft upon human credulity"—"the whole question of fraud and corruption so gratuitously imported into the case"—etc., etc.

Those expressions are not the language of a judge. They are the language of a slave, a tool of The Southern Pacific Company, set by them to do a task—the same task to which he was set in the disbarment judgment. In the final decision for the Newmans, Wm. H. Beatty, the Chief Justice, seems to have been ordered to write a separate concurring opinion to strengthen that which purports to have been written by Justice Garoutte. But a concurring opinion is supposed to differ in some particular, that being the only reason why it is written. So, as an excuse for a separate opinion—to give his work the semblance of a concurring opinion—he pretended to differ on one of the points, and in so doing admitted that "the transfer to the Newmans was unauthorized and void" (see the Appendix, p. 74). As he was ordered to decide for the Newmans, he then turned

around and lied like a pirate to nullify the rightful effect of what he had thus admitted. He obeyed his orders like an abject slave, uttering impudent, outrageous lie after lie, and using the expressions of malice and hate of which those quoted above are examples, as if doing his utmost to show himself to his masters as their most unscrupulous henchman.

17. The Lie That Ralph C. Harrison Was Not Attorney for Mrs. Levinson and Her Daughters.

The particular falsehood of the decision here referred to may be seen on p. 63 of the Appendix.

This falsehood was contrived by The Southern Pacific Company, was published by them in *The Record-Union* in December, 1894, in their editorials, and taken thence and placed in the act of disbarment. The character of the falsehood and the trickery by which it is attempted to support it in the decision, are stated on pages 244-245 above. As stated on pages 253-254 above, it is in fact a confession of Justice Harrison's guilt.

Mrs. Levinson and her daughters were the residuary legatees, *i. e.*, they took the remainder of the estate after payment of the debts and the legacy of \$3,000, mentioned above. As the estate was sure in any event to pay all its creditors and the legacy of \$3,000, the only persons actually interested against the Newmans were Mrs. Levinson and her daughters. And all the expenses of administration, including the executor's compensation, and all fees paid to Ralph C. Harrison, fell as expenses, solely upon Mrs. Levinson and her

daughters, because they were residuary legatees. Therefore, the executor was, as against the Newmans, trustee for Mrs. Levinson and her daughters and for them alone.

The malevolent dishonesty of the authors of the decision, in their treatment of this point, may be seen from the fact that they themselves take the extreme opposite position in their lying pretenses of an estoppel and ratification—pretenses discussed in subdivisions 11-13 of this chapter, and which may be seen on pages 71, 74-75 of the Appendix. In setting up those pretenses, their authors make the interest of the administrator of the estate to be absolutely and identically the same as the interests of Mrs. Levinson and her daughters. So, too, in the part purporting to have been written by Justice Garoutte (Appendix p. 54), the money paid by the Newmans to the executor is spoken of as "paid by the surviving partners *to them*," *i. e.*, to Mrs. Levinson and her daughters. But, to make out that Ralph C. Harrison was not the attorney for Mrs. Levinson and her daughters, to whitewash Justice Ralph C. Harrison, the rascals face directly about (see p. 63 of the Appendix), and, with impudent lying, pretend that the interest of the executor was absolutely, independent of the interests of Mrs. Levinson and her daughters.

18. The Lying Pretense That Mrs. Levinson and Her Daughters Were Independently "Represented" by Another Attorney.

Examples of the particular falsehood here referred to may be seen on pages 62 and 71 of the Appendix.

It is the effort of the decision to inculcate the impres-

sion that Mrs. Levinson and her daughters were independently "represented" by Mr. Philbrook, an attorney of their own choosing. This is expressed with studious cunning in the use of language. When the Justices *expressly* say "represented," they cunningly add, "throughout all Court proceedings"; but by the trick of *ignoratio elenchi* (described on pages 149-154 above), of which the language quoted under the next preceding head is an example, and by the studious suppression of the truth, they seek to make it appear that Mrs. Levinson and her daughters were independently represented by Mr. Philbrook so that Mr. Harrison was under no duty to them. But the facts are as follows:

Up to March 17, 1890, Mrs. Levinson and her daughters had no attorney or legal adviser except such as Ralph C. Harrison necessarily was under his employment as the attorney for Mr. Levinson's estate. It was in that period, viz.: on March 5, 1890, that the two Newmans, on the secret advice of Ralph C. Harrison, played upon Mrs. Levinson and her daughters the trick of obtaining from them the letter saying "we do not desire to employ any third person to assist at the stock-taking and inventory of the assets of the late firm of Newman & Levinson now in progress." Mrs. Levinson and her daughters were given no explanation whatever of the purpose of that letter. It was simply a trick played upon them for the benefit of the Newmans. The Justices have studiously suppressed Mr. Harrison's agency with the Newmans in obtaining that letter.

I was not employed by Mrs. Levinson and her daughters until March 17, 1890, *i. e.*, not until after the Newmans had completed their inventory and ap-

praisement. I immediately called upon Mr. Harrison and stated to him that Mrs. Levinson and her daughters were greatly dissatisfied with the small value set upon the interest of the estate in the partnership, and also stated to him that Mrs. Levinson and her daughters felt that they had the right to expect that he, the attorney for the executor, would act for them, that Mrs. Levinson and her daughters "looked upon it that it was his duty to take the side of the legatees and supposed he would do so." "Mr. Harrison was rather silent during the interview, but did not say what view of the case in regard to the good will of the business he would take, but at my request he promised me that I should be notified of any step which should be taken in regard to the interest of the estate in the partnership." This is from the testimony of Mr. Philbrook in the record on which the Justices have made their decision. Mr. Harrison's testimony, as a witness for the Newmans, is also in the record and expressly corroborates Mr. Philbrook's. I was, then, employed to act in conjunction with Mr. Harrison, not as an independent representative, and Mr. Harrison was immediately so informed. My relation to the case was never departed from in any respect. The secrecy and deceit which Mr. Harrison continually practiced was not only a violation of his express promise to me, but was a violation of what he knew to be his relation to Mrs. Levinson and her daughters. All this was before the Justices while writing their decision.

The pretense that Mrs. Levinson and her daughters were independently represented by an attorney of their own, so as in any degree to release Ralph C. Harrison from his duty to them, is deliberately and outrageously false.

19. The Lying Pretense That Ralph C. Harrison is Charged with Fraud for Not Questioning the Validity of the Partnership Articles.

No such fact has ever been charged against Ralph C. Harrison, nor was any such fact charged against the executor. But the decision dishonestly pretends that a part of the conduct of Mr. Harrison charged as fraudulent was his failure to assert that the partnership articles had not been executed by the deceased partner—dishonestly trying to shift the ground so as better to whitewash the Associate Justice Ralph C. Harrison. This falsehood of the decision may be seen on p. 62 of the Appendix.

20. The Lying Pretense That Mrs. Levinson and Her Daughters Consented That the Newmans Should Make the Inventory and Appraisal and That They Knew Its Purpose.

The particular piece of lying here referred to is in the part of the decision purporting to have been written by the Justice Charles H. Garoutte, and may be seen on p. 53 and again on p. 58 of the Appendix.

The decision with rankest dishonesty suppresses the fact that it was the Newmans who prepared the writing addressed to them by Mrs. Levinson and her daughters, and that they and the executor induced Mrs. Levinson and her daughters to sign it, and did this all on the secret advice of Ralph C. Harrison and without any explanation of its purpose. And the assertions that

Mrs. Levinson "knew what was being done," "had full knowledge of what was being done," are deliberate and gross lies. Neither Mrs. Levinson nor either of her daughters was given any explanation of the paper they were induced to sign and hand back to the Newmans; and none of them had the slightest knowledge or any ground to suppose that the Newmans were fixing a valuation upon which they intended to take the dead partner's interest in the firm.

21. The Lie That Mrs. Levinson and Her Daughters Had Agreed That the Partnership Articles Were Valid and Had Assented to the Newman's Inventory and Appraisal With the Sole Exception of the Omission of the Good Will of the Business.

The lie here referred to is set out in the part of the decision written by Wm. H. Beatty, the Chief Justice, as shown on pages 62-63, 71 and 72 of the Appendix. That part of the final decision is a continuation of the same falsehood as stated in the judgment of disbarment, and in the final decision it is supported by the same trickery (described on pages 242-244 above) as in the judgment of disbarment. As there pointed out, this particular falsehood was taken from the editorial published on Dec. 20, 1894, in *The Record-Union*.

In addition to what is pointed out on pages 242-244 above, let it be borne in mind that the authors of the decision have carefully suppressed the fact (shown on pages 21-47 above) of the long effort of Mrs. Levinson

and her daughters to avoid litigation by a compromise. The Newmans were starving them; and, as was afterwards discovered, were starving them on the secret advice of Ralph C. Harrison. The raising of any contention as to the fraud of the Newmans would not only have destroyed all hope of compromise, but would have left the family without hope of obtaining a present means of living, the very thing they were striving for. The universal rule that no one makes an admission by what he may say or omit to say in treating for a compromise is therefore especially applicable to Mrs. Levinson and her daughters. Besides, neither Mrs. Levinson, nor neither of her daughters, nor their attorney, was ever shown any part of the Newmans' inventory and appraisement.

22. The Lie That Mr. Levinson's Estate Had no Right to Share in the Good Will of the Business.

The particular falsehood of the decision here referred to may be seen on p. 73 of the Appendix.

That the business of a large retail house, long established and widely and favorably known, has a great earning capacity and therefore a great value, is well known. The source of this earning power is known as the good will of the business. The law concerning the good will of the firm's business as partnership property and showing the name of Newman & Levinson to be a trade name and included in the good will, as indicated on pages 103-105 above, was given fully in the plaintiff's brief. All this is met by the authors of the

decision by deliberately lying. They dishonestly pretend that the name of Newman & Levinson is not a "trade name only." They with stupendous lying pretend that it is "composed of the names of the partners." Where in it is the name William J. Newman or the name Benjamin Newman or the name John Levinson? The three Justices deliberately lie about the facts and lie about the law, asserting a conclusion known by them to be a villainous falsehood, that the good will of the business of Newman & Levinson was not part of the property of the firm.

23. The Lie That the Transfer to the Newmans Was Not Secret.

The particular piece of stupendous lying here referred to is in the part of the decision written by Wm. H. Beatty, the Chief Justice, and may be seen on page 65 of the Appendix.

The impudent lie that in the Newmans' answer filed Nov. 20, 1890, "such disclosure was fully and unreservedly made in the most direct and simple terms," has been pointed out above.

Let us now consider the assertion that, "as to the secrecy of the transaction, the simple truth is that Mr. Philbrook and his clients were not called in to witness the payment of the money or the delivery of the receipts."

There is to be noticed here the studied cunning in the use of language, cunning that pervades the entire language of the decision relating to the fraud. They

do not say *directly* that the *only* secrecy of the transaction was "that Mr. Philbrook and his clients were not called in to witness the payment of the money or the delivery of the receipts." But they say it by cunning indirection, by the phrase "the simple truth is," etc. the trickery of *ignoratio elenchi* (described on pages 149-154 above). They are adroit and cunning in the use of language as a means of lying. The meeting of the conspirators Ralph C. Harrison, M. S. Eisner, William J. Newman, Benjamin Newman and the executor, in Ralph C. Harrison's office on September 6, 1890, was secret in every respect. The transfer to the Newmans there made was utterly secret. It was never authorized by any Court or Judge, nor by any person interested in the deceased partner's estate. It was never reported to any Court or Judge. The making of the papers of transfer to the Newmans and the putting of the papers of transfer in the handwriting of Ralph C. Harrison and having them subscribed by him and by him alone as the witness, all was secret. It was all kept profoundly secret. The fact of making any paper signifying any transfer to the Newmans or that the executor had transferred Mr. Levinson's interest in the firm to them, or that he had accepted anything from them in full payment or in full settlement of Mr. Levinson's interest in the firm—no such fact was ever mentioned until M. S. Eisner mentioned it in the Probate Court on November 13, 1891, in trying to prevent Mrs. Levinson and her daughters from obtaining any of the money in the executor's hands. We thereupon immediately requested to see the paper made by the executor to the Newmans. We were put off. We made the request a second time. We were again put off. Six days later

we made the same request of the executor; he denied that he had given the Newmans any paper and refused information as to what he had done. We made the same request of him again a few days later with the same result. We then charged him with fraud and collusion with the Newmans, and on that ground demanded his removal. Thereupon, he at once sent his flag of surrender, offering to resign. It was then for the first time that Mrs. Levinson and her daughters were shown the papers made September 6, 1890, and even then only copies, not even then disclosing that, as E. R. Taylor has been careful to remind the Court, "It is in Judge Harrison's handwriting." It was not until after fifteen months that any disclosure was obtained, and even then only because forced. And during all this time the express promise of "Mr. Justice Harrison," that no step should be taken in regard to the interest of the estate in the partnership, without previous notice, stood as a continual assurance that no transfer to the Newmans nor any settlement with them had been made.

All this and the full and uncontradicted proof of it was before the Justices while making their decision. In denying the secrecy of the transfer they have deliberately and outrageously lied.

Further on in the decision its authors say that by making the secret transfer to the two Newmans "the executor placed himself in the position of unequivocally refusing to proceed against the surviving partners" etc. (See the Appendix p. 64). That is another cunning and impudent lie that the transaction was not secret. A man can not "place himself in a position of unequivocally refusing" without making his position known to

the person whom he refuses. How can any one be refused by an act done in profound secrecy and kept profoundly secret from him? The words "the executor placed himself in the position of unequivocally refusing to proceed against the surviving partners" are a deliberate and cunningly expressed lie that the transfer to the Newmans was not secret.

24. The Lying Suppression of the Executor's Refusal in November, 1891, to Disclose the Transfer to the Two Newmans.

That refusal of the executor is stated on pages 47-49 above, and is all shown clearly in the plaintiff's brief on file.

The authors of the decision deliberately and dishonestly ignore that anything of the kind ever happened.

25. The Lie That Mrs. Levinson and Her Daughters Could Not Have Shared in the Money the Executor Received, and So Were Not Injured by the Secrecy.

In the decision it is said (in the part written by Wm. H. Beatty, the Chief Justice, Appendix, p. 65):

"Their rights were not being concluded or in any wise prejudiced * * * No money in the hands of the executor could then or for months thereafter be applied in payment of claims or legacies: in short, neither the executor nor the Newmans could gain the slightest advantage, nor the legatees suffer the slightest loss, by concealment of the fact that the settlement had been made."

The falsehood of the statement that "no money in the hands of the executor could then or for months thereafter be applied in payment of * * * legacies," is plain. The executor had received his letters testamentary on March 18, 1890. And a familiar and often applied section of the Code [Sec. 1658, C. C. P.] provides that "at any time after the lapse of four months from the issuing of letters testamentary * * *

* any legatee may present his petition to the Court for the legacy or share of the estate to which he is entitled, to be given to him upon his giving bonds, with security, for the payment of his proportion of the debts of the estate." And another section of the Code provides that either the whole or a part of the legacy may then be obtained.

Besides, Mr. Levinson's will provides that from the time of his death his "beloved mother" should have \$200 per month for her support out of the income of his interest in the firm. And between his death and that time that income had amounted to more than \$6,848.82, and she had not been allowed to receive so much as a cent,—and all on the advice of Ralph C. Harrison, her attorney,—advice which he secretly gave against her for the purpose of reducing her to suffering, and thus compelling her to surrender to her cruel and treacherous enemies the Newmans.

*26. The Lie That the Transfer to the Newmans
Could Have Been of No Advantage to Them
and No Detriment to the Legatees and There-
fore Could Not Have Been Fraudulent.*

The decision says that the sole effect of the transfer so far as the executor was concerned, was "to expose the executor to censure and punishment and the Newmans to certain loss" (see the Appendix pp. 64-65). Such is the language of the very men who, in another part of the decision, say that if the Newmans were put to an accounting, they would be gainers and not losers!

But, laying aside their self-contradiction, the fact was that Mrs. Levinson and her daughters not only had no means to litigate, but were in want of the very means of livelihood. And it was on the advice of Ralph C. Harrison himself that the Newmans and the executor were doing their utmost to keep them from getting a cent of money. All this was before the Justices when writing their decision. They themselves assert that the Newmans had a right to take back all they had paid the executor unless the transfer was accepted as valid. The three Justices well knew that an old lady and her two daughters cannot litigate without money, and so did the conspirators Ralph C. Harrison, the executor and the Newmans. How false, then, how full of bad faith, how reeking with perfidy is the pretense that the transfer could not have been fraudulent because even though "unauthorized and void" only the parties to it could possibly suffer!

27. The Lie That No Profits Were Earned Between Mr. Levinson's Death and the Transfer to the Newmans.

The proof is full and uncontradicted that between Mr. Levinson's death and September 6, 1890, the date of the transfer by the executor to the Newmans, the profits of the firm were something more than \$22,829.40. Now, as already shown, the three Justices, Beatty, Henshaw and Temple avow that the articles of partnership gave the Newmans no right take Mr. Levinson's interest in the firm, and that the transaction of September 6, 1890, was a "transfer to the Newmans" by the executor. They hold, therefore, that the executor was on September 6, 1890, without authority, transferring to the Newmans Mr. Levinson's interest in the firm. The three Justices assert that the price was "fair," "indeed, a very liberal amount." But as they avow that the Newmans were taking the interest, not by virtue of any right given by the partnership articles, but under an independent transfer of September 6, 1890, the price could not be fair unless it was the value of Mr. Levinson's interest at that time. That being so, the price could not be fair without including thirty per cent. of the \$22,829.40 profits earned by the firm between Mr. Levinson's death and that time. This is all pointed out in the plaintiff's brief too plainly and emphatically to be overlooked honestly.

The authors of the decision get over all this by dishonestly omitting to say anything about it—an outrageous lie in the style of Ananias and Sapphira.

28. The Lie That the Goods Were of No More Value on September 6, 1890, Than in March, 1890.

This is an outrageous lie of suppression similar to the last. The three Justices expressly make the transfer to the Newmans rest without any support in the articles of partnership. That being so, the price could not be fair without being the fair value at the time of the transfer, *i. e.*, on September 6, 1890. Now, William J. Newman himself testifies that between March, 1890, and September 6, 1890, the McKinley tariff bill, and even the anticipated passage of that bill, affected every dollar's worth of the goods on hand, that "it raised the profit on some to 200 per cent. and on some it raised the profit to 100 per cent., and all the way from 25 per cent. up." He also testifies that the stock of goods was greatly increased between March, 1890, and September 6, 1890, and that the new goods were bought cheaply in proportion to their real value, and on the credit of the firm. Now, the Newmans were trustees of Mr. Levinson's interest in the firm. If they concealed the facts, it was fraud. If they divulged the facts to the executor and to the man who is called in the decision "Mr. Justice Harrison," then all the worse was the conduct of the executor and of "Mr. Justice Harrison." All this enormous increase in the value of the goods, an increase which, if only 100 per cent., would have added no less than \$62,626.25 to the value of Mr. Levinson's interest—all this and all the newly purchased goods were avowedly omitted from the valuation. All this is pointed out in the plaintiff's brief too plainly and emphatically to be honestly overlooked.

*29. The Lie That the Executor's Removal Was
Not Demanded on the Ground of Fraud.*

The particular falsehoods of the decision here referred to may be seen on pages 53-54 and page 64 of the Appendix. The authors of the decision there indulge in deliberate lying concerning the ground on which the executor's removal was demanded, a demand by reason of which he was compelled to resign. The ground on which, on November 24, 1891, Mrs. Levinson and her daughters demanded the executor's removal, was not "the omission to value the good will as part of the estate," nor "that he was neglecting the duties of his trust." The ground on which his removal was demanded, as expressed in the petition, was that he had been and was the mere fraudulent confederate and tool of the two Newmans, and that at sometime unknown he had secretly and fraudulently and as their confederate executed to them some instrument in writing purporting to transfer to them Mr. Levinson's interest in the firm. This is all in the record and pointed out in the plaintiff's brief too plainly and emphatically for the possibility of any honest mistake.

And as stated on page 49 above, when the executor's removal was demanded, the Probate Judge, on issuing the citation against him, required him to give a bond, *and the two Newmans furnished the bond*, a fact of which the decision is dishonestly silent.

30. *The Lie That the Fraud Charged so Far as Implicating Ralph C. Harrison, Was Only "Advice" to the Executor.*

The particular piece of lying here referred to is in the part of the decision written by Wm. H. Beatty, the Chief Justice, and may be seen on pages 63, 64 and 67 of the Appendix. As there set out, it is a continuation of the judgment of disbarment, and was taken from the editorial published on December 20, 1894. (See pages 244-5 above). The strenuous and unvarying effort of the decision is to cut down the charge of fraud, so far as involving "Mr. Justice Harrison," to mere "advice" to the executor in respect to the construction of the partnership articles. All this is deliberate and intentional falsehood. Mr. Harrison's advice to the Newmans to starve their dead partner's family—his putting the Newmans up to getting the writing from Mrs. Levinson and her daughters on March 5, 1890—his conduct in the Probate Court proceeding in July, 1890—in the Probate Court in December, 1890—his part in the secret transfer to the Newmans on September 6, 1890—his lying deceit in breaking his promise to have nothing done without notice—all this is something more than advice to the executor.

31. *The Lie That Mr. Jarboe Acted With "Mr. Justice Harrison" in the Conduct Charged as Fraudulent.*

The particular piece of lying here referred to is practiced in the part of the decision written by Wm. H. Beatty, the Chief Justice, where it may be seen on

pages 62-63 of the Appendix. Its purpose is to white-wash "Mr. Justice Harrison" by falsely representing that what he did was done by Mr. Jarboe with him. That pretense was a deliberate lie. Mr. Jarboe took no part in the matter, and did not begin to act as the attorney for the executor until in 1891, after Mr. Harrison had taken office as Justice of the Supreme Court. Mr. Jarboe then found himself in a position previously created for him by the Newmans, Mr. Harrison and the executor. He manifested his repugnance to it by declaring, "I am not going to do anything about the matter that looks unprofessional, and I have just told Ben Newman that he must stop coming here. I have told him to go and employ Dr. Taylor as his attorney, and Dr. Taylor is now the attorney for the Newmans." He also showed his repugnance to the position into which he had been put by the fact that he did not appear in the Probate Court to resist the petition of Mrs. Levinson and her daughters for part of the money in the executor's hands, but left that to be done by Mr. Eisner and E. R. Taylor, the Newmans' attorneys. By telling the executor on November 19, 1891, not to give information to Mrs. Levinson and her daughters, Mr. Jarboe still showed his consciousness that the case that had been cast upon him would not bear the light. Mr. Jarboe testifies to this as a witness, for he says: "I thought it was not prudent for him to give information until he had advised with me about doing so." But the conduct of Ralph C. Harrison had been the conduct of Ralph C. Harrison alone and not of "Jarboe & Harrison." So far as appears, Mr. Jarboe had had no more to do with it than Mr. Goodfellow, who acted for the executor at the time of his resignation. The only ex-

cuse of the Justices for dragging Mr. Jarboe in to bolster up "Mr. Justice Harrison" is that Mr. Jarboe was a member of the same law firm. But Mr. Harrison's own testimony is in the record, as a witness for the two Newmans, and is as follows: "Our firm was then Jarboe, Harrison & Goodfellow, but the matter of that estate was under my own personal care until I became a Justice of the Supreme Court." Why, then, do not the Justices drag in Mr. Goodfellow, as well as Mr. Jarboe, to bolster up the unspeakable treachery and fraud of "Mr. Justice Harrison"? The answer is plain: When the decision was made, Mr. Jarboe *was dead and could not protest!*

32. The Impudent Lie That Mr. Harrison Sought the Direction of the Probate Court As to the Right of Mr. Levinson's Estate to Share in the Good Will of the Business of the Firm.

The particular falsehood of the decision here referred to may be seen on page 63 of the Appendix. It is a deliberate and impudent lie about the proceeding in the Probate Court in July, 1890 (stated on pages 29-31 above). With their characteristic trickery in the use of language, the authors of the decision say that Ralph C. Harrison was in that proceeding trying to obtain a decision by the Probate Court of the question whether Mr. Levinson's estate was entitled to an allowance for the good will of the business. This assertion of the Justices is a deliberate and most impudent lie. The petition there filed by the Newmans is in the record of the case upon which the Justices base their decision.

That petition stated that "an inventory of the assets and liabilities of said copartnership was taken and an appraisement thereof made, from which inventory and appraisement, by its terms, the value of the interest of said decedent's estate in said copartnership and the total amount due to the estate of said decedent on account of his interest in said copartnership was ascertained and determined to be the sum of \$20,790.80." That petition said not a word about the omission to make allowance for the good will of the business. On the contrary, it declared that all the assets had been allowed for. Ralph C. Harrison appeared there and filed an answer for the executor, saying, "Now comes S. W. Raveley, the executor of the last will and testament of John Levinson, deceased, and admits that the facts set forth in the application of William J. Newman and Benjamin Newman for an order allowing them to purchase the interest of the decedent in the firm of Newman & Levinson are correctly stated in said petition and submits to the judgment of the Court as to the order proper to be made in the premises." In that proceeding the Newmans and Ralph C. Harrison, on behalf of the executor, joined in concealing the omission to make allowance for the good will. All this was before the Justices while making their decision. In asserting that it was the purpose, or any part of the purpose of "Mr. Justice Harrison" to obtain there a ruling of the Probate Court in respect to the right of Mr. Levinson's estate to share in the good will, the Justices have outrageously lied.

33. *The Lying Suppression of the Proof of Ralph C. Harrison's Confederacy With the Newmans.*

It will be seen from the facts stated under the next preceding head, that the proceeding there referred to was a fraudulent and collusive attempt by Mr. Harrison, Mr. Eisner, the Newmans and the executor to obtain, on false and lying grounds, an order of the Probate Court as an excuse for turning over Mr. Levinson's interest in the firm to the Newmans for only \$20,790.88. A special incentive to that attempt was the fact of the passage of the McKinley tariff bill in the House of Representatives on May 21, and the assurance that it was about to become a law. This fact had enormously increased the value of the goods on hand, and also the value of the good will of the business. As already mentioned, William J. Newman testifies that "it raised the profit on some to 200 per cent., and on some it raised the profit to 100 per cent., and all the way from 25 per cent. up." He also says: "For instance, a dozen pearl buttons that we formerly sold for five cents have risen to fifteen cents, and they did not cost us any more than they did before, but the retail price has raised on them. A pair of corsets that we sold for \$3 and had them on hand has raised to \$3.50. Every yard of lace that we sold for forty cents has been marked up to fifty cents, consequently that made quite a difference in the profits. And any man who did not make profits that year was no business man." In the proceeding in the Probate Court Ralph C. Harrison was no mere *adviser* of the executor, but a chief actor. It was he who drew up, signed and filed

the answer of the executor admitting the lying petition of the Newmans to be true, concealing even the omission to allow for the good will. The executor himself, though present, did not sign the answer. That proceeding in the Probate Court was clearly and undeniably an act of conspiracy against Mr. Levinson's estate, and in favor of the two Newmans. It was a scheme in which Ralph C. Harrison, M. S. Eisner, the two Newmans and the executor were fraudulent confederates. It was thwarted only by the fact that I got wind of what was going on and showed the Probate Court that it had no jurisdiction to make the order which Mr. Harrison and the Newmans were seeking.

The Justices get over this proof of the confederacy of Ralph C. Harrison with the Newmans by dishonestly suppressing the facts—and with the impudent lie that Mr. Harrison was trying to get a ruling on the question of the good will. But this is far from all the facts relating to the proof of Ralph C. Harrison's fraud, that are, in the final decision, carefully suppressed and kept out of sight. There is, in the final decision, the same suppression of the facts as in the judgment of disbarment, pointed out on pages 241-2 above.

34. The Lying Pretense That Mr. Harrison Was "Obliged to Take the Responsibility of Deciding" That the Executor Should Make the Transfer to the Newmans.

The particular falsehood of the decision here referred to may be seen on pages 63-64 of the Appendix.

The pretense of Mr. Harrison's "being obliged to

take the responsibility of deciding" whether the executor should transfer the interest of Mr. Levinson in the firm to the Newmans for only \$20,790.88, is an outrageous falsehood. The bad faith with which it is asserted in the decision is manifest. The Justices base the assertion upon the pretense that Mr. Harrison had tried to get a ruling from the Probate Court, which has been shown to be an impudent double lie; and upon the pretense that it was his duty "especially to see that he [the executor] wasted no part of the estate in fruitless litigation." But the only part of the estate that could be so wasted was that of Mrs. Levinson and her daughters. And in other parts of the decision, the Justices, in support of their lying pretense that no advantage was taken of Mrs. Levinson and her daughters, say: "Levinson's residuary legatees were his mother and sisters, all of full age"—"the mother and sisters of Levinson—all adults—and Mr. Philbrook, their attorney"—"the heirs, who were all of age, and who were represented throughout all court proceedings by their attorney." How rascally, then, to pretend that Mr. Harrison was "obliged to take the responsibility of deciding" upon a secret transfer of Mr. Levinson's interest to the Newmans for only \$20,790.88 out of a duty "especially to see that he wasted no part of the estate in fruitless litigation." As Mrs. Levinson and her daughters were "all of age" and, besides, had employed a special attorney, and as it was their property that was being sold, and as the sale was being made against their wishes, why were neither they nor their attorney consulted?

The authors of the decision also dishonestly suppress the fact that the attorney employed by Mrs. Levinson

and her daughters to act with Mr. Harrison had told him and the executor and Mr. Eisner on July 26, 1890, that he would soon file a petition in the Probate Court, on behalf of the legatees, asking that the executor's inventory and appraisement be amended so as to include the good will, a petition that would lead to a ruling on the good will. If Mr. Harrison had been acting honestly, why did he secretly forestall that petition that was soon to be filed? The pretense that he was "obliged to take the responsibility" to advise the secret transfer is a most villainous lie.

35. The Lying Suppression of Ralph C. Harrison's Making in the Probate Court an Argument for the Two Newmans.

The record contains the proof, and the plaintiff's brief points it out as one of the facts showing that Ralph C. Harrison and the executor were confederates of the Newmans, that in December, 1890, after Ralph C. Harrison had been elected a Justice of the Supreme Court, he appeared in the Probate Court and made a strenuous argument for the two Newmans on the question of the good will, and that he also filed a brief for them, and that Mr. Eisner expressly submitted the case for the two Newmans upon the argument "Mr. Justice Harrison" then made. This is the fact stated on pages 39-40 above. On that occasion Mr. Harrison, with the money of Mrs. Levinson and her daughters in his pocket, was putting forth all his ability and ingenuity and his influence as Justice-elect of the Supreme Court in favor of their adversaries the two Newmans. And as

the Newmans and the executor, on Mr. Harrison's advice, were successfully holding Mrs. Levinson and her daughters in penury, a ruling of the Probate Court against them would have been likely to crush them completely. But so groundless was his contention that the Probate Judge ruled against him and the Newmans and in favor of Mr. Levinson's estate. The Justices in their decision get over this proof of the confederacy of Ralph C. Harrison and the executor with the Newmans by dishonestly, lyingly ignoring it.

36. The Dishonest Suppression of Ralph C. Harrison's Advising the Newmans Not to Let Mrs. Levinson Have Money.

Immediately after Mr. Levinson's death, William J. Newman offered to loan Mrs. Levinson from time to time money for living expenses until the estate should be settled. In July, 1890, he received from Ralph C. Harrison the advice not to let her have another cent of money until she stopped threatening to fight him and his brother. This is proved without contradiction by the testimony of Mrs. Levinson and of William J. Newman in the record. The Newmans followed that advice and succeeded, with the executor's help, in keeping their dead partner's family from receiving any money from his estate until November, 1891, upwards of one year and eight months, when the \$9,000 was obtained by order of the Probate Court, as the Justices say, "over the protests of the executor and of the Newmans."

The Justices get over this evidence of the confederacy of "Mr. Justice Harrison" and the executor with the Newmans by simply ignoring that anything of the kind ever happened.

37. The Dishonest Suppression of the Fact That the Two Newmans Had in Their Pockets More Than \$22,288.64 as Profits Belonging to the Deceased Partner's Estate at the Very Time They and the Executor Tried to Prevent a Part Distribution to Mrs. Levinson and Her Daughters.

The total sum paid by the two Newmans to the executor, including a small sum as interest, was \$20,964.08. It was on November 13, 1891, that the deceased partner's family obtained \$9,000 of that sum by a decree of part distribution. That decree was obtained only after a contest made in the name of the executor by E. R. Taylor and M. S. Eisner, attorneys for the Newmans. This is stated on pp. 45-47 above. Now, between Mr. Levinson's death and that time the two Newmans had actually netted and pocketed, out of the income of his interest in the firm, more than \$22,288.64,—had received, from only the earnings of his interest in the firm, much more than all they had paid to the executor as the price of the interest itself. This is shown without dispute by the proof in the record, and is clearly and emphatically pointed out in the appellant's brief.

The authors of the decision for the two Newmans have dishonestly ignored that any such fact existed.

38. *The Dishonest Pretense That the Newmans' Attorneys Acted Properly in Appearing as Attorneys for the Executor and Striving to Induce the Probate Court to Withhold Money from the Deceased Partner's Family.*

The conduct here referred to is mentioned on pp. 45-47 above. M. S. Eisner and E. R. Taylor, attorneys for the Newmans, there acted in the role of attorneys for the executor, *i. e.*, as attorneys for the deceased partner's estate, and as such put forth their efforts to induce the Judge of the Probate Court to withhold from the aged widow and her daughters, the deceased partner's family, the money of which for more than nineteen months they had been kept in need and to which they were entitled beyond any possibility of honest question. It may, I think, be fairly mentioned here, though this is not stated in the record in the Supreme Court, that this E. R. Taylor is well known as a crony of Ralph C. Harrison. These attorneys, E. R. Taylor and M. S. Eisner were, without shadow of right, and in the role of attorneys for a party for whom they had no right to appear—in a proceeding in which the Newmans were not parties and where they had no right to be heard—were trying to induce the Probate Judge to make a false ruling and solely for the purpose of enforcing against the deceased partner's family the siege of starvation prescribed by the treacherous scoundrel "Mr. Justice Harrison." M. S. Eisner and E. R. Taylor were there engaged in the basest misconduct of which an attorney could be guilty. The vile business in which they were so vilely exerting themselves was

but evidence of the unscrupulous confederacy of the two Newmans and the executor.

But the authors of the final decision not only have upheld as proper the misconduct referred to here, not only have dishonestly suppressed all mention of it as evidence that the two Newmans and the executor were in collusion, but have actually made the fact that the aged widow and her daughters there succeeded in breaking the prescription of penury put upon them by their attorney "Mr. Justice Harrison," such an offense as to forfeit all their rights.

39. The Dishonest Suppression of Testimony that Ralph C. Harrison Was the Newmans' Attorney.

There is in the record the clear and uncontradicted testimony of Wm. J. Newman himself that for some months after Mr. Levinson's death Ralph C. Harrison was his attorney. Mrs. Levinson testifies without contradiction that in July, 1890, Wm. J. Newman spoke to her of Ralph C. Harrison as "his lawyer." This is set forth in the plaintiff's brief.

The authors of the decision deliberately ignore and suppress all this.

40. The Lying Misrepresentation of the Inventory and Appraisement Filed by the Executor.

This paper is in the record. It was not a legal probate appraisement, because only two of the appointed appraisers qualified and only those two signed the appraisement. The sum set down as the value of Mr.

Levinson's interest was only \$20,790.88, the sum which the Newmans had named but which was nowhere to be found in their inventory and appraisement, or anywhere else. The plaintiff's brief mentions all this as showing that there was no legal probate appraisement and that the executor was only the tool of the Newmans because such appraisement as he did file was only the sum named by the Newmans—that the two appraisers who signed could not have looked even at the Newmans' "balance sheet."

The decision ignores all this and with deliberate falsehood says (Appendix, p. 53):

"In the inventory and appraisement returned by the executor the value of the interest of Levinson in the partnership assets was stated as the same sum as that fixed by the appraisement of the defendants, to wit, \$20,790.88, and was adopted on the strength of that appraisement."

41. The Lying Pretense That All the Parties Understood That Mr. Levinson's Interest in the Firm Had Passed to the Newmans.

The particular piece of lying here referred to is practiced in the part of the decision written by Wm. H. Beatty, the Chief Justice, and may be seen on pages 62-3, 71 and 72 of the Appendix.

It is there asserted, with the trickeries of *ignoratio elenchi* and *covert assumption* (described on pages 148-154 above), that all parties understood that Mr. Levinson's interest had passed to the Newmans without any act of the executor, the evident purpose being to shield "Mr. Justice Harrison." This pretense is a deliberate and most outrageous lie.

That the Newmans and M. S. Eisner understood the very contrary is shown by the petition of the Newmans filed in the Probate Court in July, 1890. That petition was signed by both the Newmans and by Reinstein & Eisner as their attorneys, and said:

"Therefore your petitioners pray that this honorable Court * * make its order directing the said executor to make a transfer and conveyance in valid legal form to them of the entire interest of said decedent's estate in said copartnership at the time of said decedent's death or subsequently acquired."

What Ralph C. Harrison and the executor understood is shown by their answer to that petition, in which they speak of it as:

* * "the application of William J. Newman and Benjamin Newman for an order allowing them to purchase the interest of decedent in the firm of Newman & Levinson."

There is not a particle of evidence that Mrs. Levinson and her daughters or any of them understood or even suspected that the whole or any part of the interest of Mr. Levinson in the firm had passed to the Newmans. The proof of the very opposite is full and complete and without contradiction. And the decision was written with a full knowledge of this fact.

The same lying pretense is made in the language of the decision (Appendix pp. 62-3) that "Jarboe and Harrison [a lying *alias* for Ralph C. Harrison] * * * always maintained openly and unequivocally that, according to the proper construction of the agreement, the surviving partners took the whole interest of the deceased partner." That assertion is a deliberate and gross and outrageous falsehood from end to end.

42. *The Lying Suppression of Ralph C. Harrison's Use of His Express Promise as a Cover for Deceit In Favor of the Newmans.*

The record shows without contradiction, and the plaintiff's brief points it out, that, over and above the duty of Ralph C. Harrison and the executor toward Mrs. Levinson and her daughters, Mr. Harrison expressly promised in March, 1890, that Mr. Philbrook "should be notified of any step which should be taken in regard to the interest of the estate in the partnership." The proof is full and without contradiction that Mr. Harrison never in any particular kept that promise, but without exception, used it as a means to throw Mrs. Levinson and her daughters off their guard.

All this the Justices in their decision have studiously and dishonestly suppressed.

43. *"The Opinion of the Trial Judge, Hon. W. T. Wallace, Which Opinion is Set Forth in the Record."**

This is from the language of the final decision for the Newmans. On pp. 53-4 above it is stated how the opinion referred to came to be in the record. It is shown in the Appendix (pp. 3-4) so that the reader may examine it. The sole reason why I so exerted myself to have it placed in the record was to show to the Supreme Court the extreme denial of justice that had been dealt out in favor of the two Newmans in the order appealed from.

*See the Appendix p. 54 and also pp. 18, 23 and 36.

In the plaintiff's brief this opinion of the trial Judge is printed in full, and is shown and carefully demonstrated to be outrageously false to the extent of an extreme denial of justice.

How have the Justices here named met all this? Why, thus: They have studiously and utterly ignored the demonstration of the falsity of the ruling and the denial of justice so shown to them. The fact of its being so shown them, they have made one of the grounds for disbaring the attorney, who pointed it out, saying, in a passage which may be seen on p. 23 of the Appendix:

* * "It [the appellant's brief] also contains language highly reprehensible concerning the learned Judge of the Superior Court who heard and determined the said action at *nisi prius*." * *

And, studiously and utterly ignoring the falsity of the opinion and the denial of justice there shown, they have, in the final decision for the two Newmans, cited the fact that it was made as a ground for confirming it.

According to these corrupt Judges, the making of an outrageously false decision, the giving of false judgment, is no offense; it is their own practice; according to them, the offense consists in complaining of the wrong, in seeking redress.

44. *The Impudent and Stupendous Lie as to the Facts Proving the Fraud and Corrupt Practices in Which Ralph C. Harrison Participated.*

In the part of the decision written by Wm. H. Beatty, the Chief Justice, it is said, with the impudent and outrageous lying characteristic of its author, that the only

facts charged as showing the Associate Justice Ralph C. Harrison guilty of fraud or of "an attempt to corruptly influence the decision of this Court" are: 1. His nomination as candidate for Justice of the Supreme Court; 2. His continuing "to advise executor Raveley"; and 3. His drawing up and witnessing "the papers which passed upon the settlement." The passage where the impudent and outrageous piece of lying here referred to is practiced, may be seen on page 67 of the Appendix. To show it to be an impudent and outrageous piece of lying, it is enough to point to it. The facts are stated on pages 16-59 above, and a summary is given on pages 79-106 above.

45. The Falsehood of the Pretense That the Secret Transfer Was Not a Contrivance to Influence the Courts Corruptly.

In the part of the decision purporting to have been written by the Justice Charles H. Garoutte it is declared that "all question of fraud is out of the case" (see the Appendix, p. 54). In that written by Wm. H. Beatty, the Chief Justice, it is declared that "it seems scarcely creditable that a normal mind could regard them as evidence of fraud or as an attempt to corruptly influence the decision of this Court (Id., p. 67).

The falsehood of the pretense that the secret transfer was not a contrivance to influence the courts corruptly is manifest from the facts as they appeared before any action upon the case by the Justices of the Supreme Court. This has been pointed out on pages 34-36 and 79-97 above. That it was such a contrivance, that such

was its natural and intended effect, and that it has been actually and intentionally given effect as such has been demonstrated in all the misconduct of the Justices of the Supreme Court in relation to the case, and here shown in detail, beginning on page 107 above.

46. The Refusal to Set Aside the Decision or to Consider the Case.

As the administrator of the Levinson estate, and as such the plaintiff in the suit, I filed in the Supreme Court, on Nov. 25, 1896, a printed petition asking for a reconsideration of the final decision for the two Newmans, which has also been shown in the preceding pages, and for a hearing of the case. No hearing of that petition was allowed, but on Dec. 5, 1896, the Justices unanimously joined in an order denying the petition, but without giving any reason.

Thereupon, two days later, the Clerk of the Supreme Court issued a remittitur certifying to the Superior Court that the suit had been finally decided in favor of the two Newmans.

VI.

The Persistent Keeping Up of the Outrages.

In giving judgment in *Rex vs. Wilkes*, 4 Burr. 1770, Lord Mansfield said:

“If I was wrong, I should think it more honorable to acknowledge and rectify any error than to justify and defend it.”

How opposite is the spirit with which the wrongs stated in the preceding pages have been committed! In the minds of those guilty of such wrongs it has been far from being a question of what would be "more honorable;" they are both strangers and enemies to the idea expressed in the word "honorable." They have not even pretended "to justify and defend" what they have done; and for the plain reason that no justification or defense can be made.

They persist in their crimes and *keep silent*.

1. The Suit Against the Two Newmans Is Still Pending in the Supreme Court of California and a Hearing Denied.

By virtue of express and positive provisions of the Constitution of the State, and of the fact that the authors of the final decision for the two Newmans divided into three against three upon what they themselves in that decision declared to be "of course the main question in the case" (see the Appendix p. 61) and "the questions upon which the decisions of the appeal necessarily depends" (Id. p. 67)—that decision is not a decision or judgment of the Supreme Court of California. In pages 318-324 above this is shown to be the actual state of the case.

Also by virtue of express and positive provisions of the Constitution and of the fact that no hearing of the case was allowed, the final decision for the two Newmans is utterly null and void. On pages 307-315 and also on pages 127-137 above this also is shown to be the actual state of the case.

Still further, because of the rank dishonest and malice and wickedness out of which that final decision was made, it is utterly void not only in natural justice but in legal effect. In the words of the Supreme Court of the United States (quoted on p. 189 above), "in determining what is due process of law regard must be had to substance, not to form."

And still further, because of the fact that the final decision for the two Newmans is wholly the work of The Southern Pacific Company, it is not a decision or judgment of the Supreme Court of California.

The suit is therefore still pending in the Supreme Court of California. The suit has not only not been decided; it has not even been heard.

The Importance of the Accounting Suit.

Here is a suit, the suit of a widow and her two daughters, the family left unprotected by the death of their natural protector—that natural protector a universally esteemed, widely beloved and most worthy merchant of San Francisco (the late John Levinson). The suit has been regularly taken into the Supreme Court of California by that family thus left unprotected. The taking of the suit into the Supreme Court of California was accomplished only by a necessary expenditure of nearly \$900 in money actually paid for the mere printing of the record and the brief, an expenditure absolutely required by the established rules of the Court. And now, upon no other pretext than that of the wickedness described in the foregoing pages, even a hearing of the case has been and is still being denied,

and the case declared, with wicked falsehood, to be decided.

The suit is pending in the Supreme Court of California, and it is the moral, the natural, the just, and the constitutional right of that widow and her daughters, and of the administrator of the estate of John Levinson, as their representative, to have the case heard by the Court and full, ample and speedy justice awarded.

The Issuance of the Remittitur is Immaterial.

The fact that the clerk of the Supreme Court issued a remittitur in December, 1896, as above stated, does not in even the least degree affect the state of the case as a suit still pending in the Court or the right to have the suit heard and decided.

The Supreme Court has power to recall a remittitur in every case where it has been issued improvidently. This was expressly decided in the case of *Rowland vs. Kreyenhagen*, 24 Cal., 59.

And besides, the Constitution of California, in the 4th Section of the 6th Article, declares, concerning the Supreme Court:

“The Court shall also have power to issue writs of mandamus * * * and all other writs necessary or proper to the complete exercise of its appellate jurisdiction.

2. The Judgment of Disbarment Has Been and Is a Continuing Crime.

The judgment of disbarment has been ever since it was made, in legal effect, as well as upon every princi-

ple of morality, justice and right which is applicable to it, utterly null and void and entitled only to disrespect, contempt and execration. This has been shown on pages 107-289 above. Ever since that disbarment was inflicted, it has been the bounden duty of the Supreme Court of California, and the sworn duty of every Justice of the Court, to declare it to be void and to set it aside and to do so upon an express and full statement of the just grounds for so doing. And ever since the false and libelous reports of the case published in the California Reports, as above stated, it has been the bounden duty of the Court, and of every Justice of it, to make and publish in the California Reports such a report of the decision setting that disbarment aside as to furnish a full retraction by the State of California of the infamous libels which have been published, in the name of the State, in those false reports of the case.

3. The Guaranty of the American People.

In the 14th amendment of the Constitution of the United States, which, as one of the results of the civil war, was adopted in 1868, the American people have declared, among other things :

“No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.”

And also (Art. VI):

“This Constitution, and the laws of the United States which shall be made in pursuance thereof * * shall be the supreme law of the land ; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.”

Take, now, an illustration from the law of continuing nuisances. It is an elementary rule of law familiar to every lawyer—a rule which is only the expression of a plain truth,—that every continuation of a nuisance is itself a renewed perpetration of that nuisance. For the reasons above stated, and by virtue of the guaranties of the Constitution of the United States, just quoted, it is likewise the plain truth that ever since the disbarment was inflicted its authors have every day deliberately, maliciously and wickedly inflicted it anew, and since the respective decisions of the three appeals, as above stated, their authors have deliberately, maliciously and wickedly perpetrated them anew. All these outrages—after having been already kept up for years—are being every day, with all the malice, the outrage and the extreme of wickedness which in the preceding pages are pointed out in detail, falsely, deliberately and wickedly persisted in and renewed.

Within the last seven months certain persons have interviewed certain of the corrupt Judges of the Supreme Court above named, for the purpose of trying to open a way for the removal of the disbarment, and have told me that the Associate Justices so interviewed have professed a wish to remove the disbarment, but that

they profess to defer to the Chief Justice, Wm. H. Beatty, for the course to be pursued. Within the same period Wm. H. Beatty, the Chief Justice, has several times sent me a verbal message to the effect that, if I will put myself into the hands of some attorney-at-law, pledging myself beforehand to do whatever such attorney, after consulting with him, may prescribe,—that upon my compliance with the terms which are to be thus communicated, I shall be allowed to resume the practice of my profession. It is of course evident that what he and his associates are endeavoring to extort is that I shall make a public false declaration that all the unspeakable injustice, cruelty, oppression and outrage stated in the preceding pages has been just, proper and lawful; that the cause of my clients, Mrs. Levinson and her daughters, against the two Newmans, was and is without foundation, “an imaginary state of facts founded on no evidence”; and such a declaration as to furnish further whitewash for the unspeakable scoundrel Associate Justice Ralph C. Harrison. Such is the bribe which these false and corrupt Judges seek to extort.

The reader must not suppose that it is in self-laudation that I state my refusal to comply with terms so infamous, my refusal to betray truth, justice, the fundamental rights of a human being and the cause of my clients. I should be fool indeed, not to be sensible that by complying with such terms, in submitting to such extortion, I should be only making myself irretrievably a party to my own destruction. I state the fact only to indicate still further the unspeakable baseness and wickedness of the false and corrupt judges here exhibited. See the passage from Sir Edward Coke, quoted on page 174 above.

VII.

Other Efforts That Have Been Made Seeking Redress.

1. A Memorial to the Legislature.

After the final corrupt decision for the two Newmans and the refusal to set it aside, I prepared a memorial addressed to the Legislature of the State. In the memorial I stated all the outrages which up to that time had been committed by the Justices of the Supreme Court upon Mrs. Levinson and her daughters and myself, as stated above, except only the participation of The Southern Pacific Company; and I asked for the removal of the seven corrupt Justices of the Supreme Court of the State, because of their corrupt misconduct in office. The reason why I omitted to charge in the memorial that those outrages were the work of The Southern Pacific Company was that up to that time I had not been able to get the proof of that fact. I printed the memorial as a book entitled "The Corrupt Judges of the Supreme Court of the State of California," and in March, 1897, the Legislature being then in session—sent a copy of it to each House of the Legislature, and placed a copy of it in the hands of every Senator, and of every member of the Assembly. I also distributed hundreds of copies of the memorial throughout the State. To that memorial the only response was silence. The Justices kept silent. The Legislature neither took any action nor did either House even pretend to make or to attempt investigation.

**2. A Suit for Damages, in the United States Circuit Court.
The Hand of The Southern Pacific Company.**

In addition to the guaranty quoted on page 395 above, the 14th Amendment of the Constitution of the United States contains a provision as follows:

“Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.”

Upon that express authorization the Congress passed on April 20, 1871, an act entitled “*An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other purposes.*”

The first Section of this Act was subsequently made Section 1979 of the Revised Statutes of the United States, which is as follows:

“Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof, to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

Other provisions enacted by Congress and placed in the Revised Statutes have assigned to the Circuit Court of the United States the jurisdiction of every such “action at law, suit in equity, or other proper proceeding for redress.”

By virtue of those provisions of the Constitution of the United States and of the acts of Congress every person who as Justice of the Supreme Court of Cali-

formia took part in the crime of the disbarment or in the final corrupt decisions for the two Newmans, and also their instigators, supporters and confederates, The Southern Pacific Company, the two Newmans, J. B. Reinstein, M. S. Eisner, E. R. Taylor and Robert Y. Hayne, are all liable for the damages to the persons injured; and it is the jurisdiction and duty of the Circuit Court of the United States to enforce that liability. That this is so any intelligent person who is not a lawyer may see for himself by looking at the Constitution and the act of Congress. The lawyer may further satisfy himself that such is the case by examining the authorities cited in the foot-note.*

As soon as I had collected sufficient proof that The Southern Pacific Company were the actual authors of the outrages, I commenced in September, 1897, in the United States Circuit Court in San Francisco, a suit for damages against the Justices Ralph C. Harrison, Wm. H. Beatty, Charles H. Garoutte, Frederick W. Henshaw, Thos. B. McFarland, Jackson Temple and Wm. C. Van Fleet, and John J. De Haven and Wm. F. Fitzgerald and also against the two Newmans and the three attorneys who had been most plainly in the conspiracy, namely, J. B. Reinstein, M. S. Eisner and Robert Y. Hayne, a suit for the damages caused to me in my personal capacity by the disbarment. Wm. F. Fitzgerald was then the Attorney-General of the State; and John J. De Haven had become the United States District Judge for the Northern District of California. I did not include The Southern Pacific Company in the suit, and I carefully refrained from making any indica-

* *McCulloch v. Maryland* 4 Wheat. 409, 421; *Ex Parte Virginia* 100 U. S. 339; *Civil Rights Cases* 109 U. S. 3.; *Angle vs. Omaha Co.* 151 U. S. 1; *Boston vs. Simmons* 150 Mass. 461; *Reg. vs. Wilson* 7 Cox C. C. 190; *Pulmer vs. Concord* 48 N. H. 211; *Greenl. Ev.* Vol. 1 § 111, Vol. 3 § 93, 94.

tion that I knew or suspected that the disbarment was the work of The Southern Pacific Company.

The wisdom of so carefully refraining from any indication that I knew or even suspected that The Southern Pacific Company were the authors of the disbarment or even that they had any hand in it was immediately apparent.

In the first place, out of the supreme confidence that the hand of that evil and terrible organization had been—as it usually is—so well concealed that their victim would not even attempt to show that they were the real authors of the crime—out of that supreme confidence it happened that The Southern Pacific Company both *assumed the defense of the suit* and *consented to a trial*. The attorney who appeared openly to represent the Justices Ralph C. Harrison, Wm. H. Beatty, Charles H. Garoutte, Frederick W. Henshaw, Thos. B. McFarland, Jackson Temple and Wm. C. Van Fleet, and the ex-Justice John J. De Haven, was none other than John Garber, the chief court attorney of The Southern Pacific Company. And all the persons whom I had sued appeared at the same time, challenged me, all in precisely the same form, to prove my charges, and admitted, all in the same form, that if I could do so I was entitled to a verdict. The Justices whom I had sued gave out to their friends that now they were going to obtain the verdict of a jury for their vindication; and The Southern Pacific Company's attorneys representing them made extensive, unsparing and elaborate preparation to try the case by jury.

The case was accordingly, with the express consent of all parties, set for trial by jury on Jan. 11, 1898. On that day all the parties appeared in the United States

Circuit Court in San Francisco to try the case. I, of course, appeared alone to conduct my side of the case; for no lawyer of California would have dared to assist me, or to appear at my side in such a trial. Three well-known attorneys of The Southern Pacific Company, with two other attorneys to assist them, appeared for the defense. To influence the Court and jury against me, all the great morning newspapers of San Francisco had been enlisted to misrepresent and ridicule the case, and were actively engaged in so doing. With the express consent of all parties, a jury of twelve men were empanelled and sworn to try the case.

Before the jury were called, before I had given any indication that I knew or even suspected that The Southern Pacific Company were the authors of the disbarment, I had Wm. H. Mills and all his editors of *The Record-Union* subpoenaed and brought into court as witnesses, and I made sure also that other witnesses equally important were within reach, and also was careful to give no hint of who any of those other witnesses were, so as to avoid their being sent away where they could not be reached by subpoena.

As soon as the jury were sworn to try the case, I made them a statement of the evidence which I was about to produce. In that statement to the jury I exhibited for the first time the proof that the crime of the disbarment and the false and libelous report of it published in the California Reports, and the denial of justice to Mrs. Levinson and her daughters, stated in preceding pages of this paper, were the work of The Southern Pacific Company, that it had all been done by The Southern Pacific Company to reward and support their agent, the Associate Justice Ralph C. Harrison,

and that the persons who as Justices of the Supreme Court of California had taken part in those outrages were all of them corrupt agents of The Southern Pacific Company. I specified in particular the evidence pointed out in preceding pages of this paper; but I had also at hand, as I then stated to the jury, other and exceedingly important evidence—evidence which, as I then told the jury, I still had to refrain from stating specifically, because if I should have told or even hinted at the specific facts, the witnesses by whom I would have had to prove those facts would without doubt have been spirited away beyond the reach of a subpoena. I of course still refrain from specifying that other evidence, and for the same reason.

The Immediate Breaking Down of the Defense.

Immediately upon my making that statement to the jury, the defense broke down. Though I was conducting the case in person and alone, though they had on their side all advantages except the truth, though they had joined in demanding a trial of the case by jury and had made most extensive and elaborate preparation to try the case by jury and had taken part in having a jury impaneled and sworn to try the case,—when they heard my statement of the evidence which I was about to produce and found out what witnesses I had already brought into court, The Southern Pacific Company's attorneys, who were conducting the defense, addressed the Federal Judge who was presiding and set up the false claim that the law did not authorize the trial of such a case or entitle me to any relief, and asked that upon that false ground the case be taken from the jury

and dismissed. The Federal Judge presiding immediately produced and read a long written opinion filled with extreme falsehood and miserable prevarication and, setting aside the plain provisions of the Constitution of the United States—setting aside the plain and positive guarantee of the American people—forbade the production of any evidence, withdrew the case from the jury and ordered it dismissed. This was in January, 1898, and in the United States Circuit Court in San Francisco. The Federal Judge who presided was Hiram Knowles, the United States District Judge for Montana. By means and for reasons alike unknown to me, he had been brought from Montana to try the case. His opinion may be seen in Volume 85 of the Federal Reporter at p. 139, where it is said to have been delivered “orally.”

That ending of the case was plainly a most substantial confession, both by the Justices of the Supreme Court of California and by The Southern Pacific Company,—a most substantial and convincing confession that they are guilty of all the charges made against them in this paper.

W. W. Foote and Ralph C. Harrison.

One of the attorneys who appeared at this trial was W. W. Foote, who announced that he had been employed specially to represent Justice Ralph C. Harrison. Here was Justice Ralph C. Harrison, the traitor who sold his clients Mrs. Fanny Levinson and her daughters to their enemies the two Newmans, employing as his special champion W. W. Foote, the traitor who sold his clients James P. and Frederick A. Merritt to

their enemy Judge Stanly (see pages 64-75 above)—birds of a feather—traitor appearing as champion of traitor. Now, as is well known, the forte of W. W. Foote is that of a bully and blackguard. Big and burly, his tactics are to embarrass the opposing counsel and the opposing witnesses with insolence, browbeating and all manner of blackguardism. Apparently it was for such work that Justice Ralph C. Harrison employed W. W. Foote at this trial, for he forthwith began those tactics upon me. For instance: as I was making to the jury my statement of the evidence, he arose, swaggered up, and breaking in upon me insolently, demanded in his bullying, browbeating way whether I meant that I would show a connection between Justice Harrison and the articles in *The Record-Union* and *The Evening Post*, and added with great violence and an extremely insulting tone, "Yuh *ca-a-n't* do it, and yuh *kne-o-ow* yuh can't." But that was his last shot. I replied, "Wait only a few minutes, Mr. Foote, and you will see that the case reaches you too." I then said to the jury that a part of the evidence to be produced showing that Justice Ralph C. Harrison and the other Justices of the Supreme Court of California, his associates, who had taken part in the disbarment, were the corrupt agents of The Southern Pacific Company—would be the fact that on December 1, 1894, those Justices had made a false decision in the *Estate of Catherine M. Garcelon*, for the purpose of giving to The Southern Pacific Company a bit for the mouth of W. W. Foote, and thereby to enable The Southern Pacific Company, while hoodwinking the people of the State, to control the defense of the injunction suit which they were then intending to bring and which they afterwards did bring

against the Board of Railroad Commissioners to prevent a reduction in the charges for carrying freight upon their railroads. I then stated also that I should show that the defendants Wm. F. Fitzgerald and Robert Y. Hayne, the other attorneys who pretended to represent the people in that injunction suit, were only tools of The Southern Pacific Company. The Judge presiding (Judge Knowles) then said to me that he could not see how the decision in the *Estate of Catherine M. Garcelon* gave any control of W. W. Foote; and to this I replied that I would show how it so operated when I came to produce the evidence. At the same time I had a subpoena served upon W. W. Foote directing him to attend as a witness and to bring his contract with James P. and Frederick A. Merritt.

The effect upon W. W. Foote was instantaneous and final. Up to this time he had been trying industriously to bully and blackguard me; and whenever the Court took recess, would instruct the newspaper reporters who were in attendance, how to misrepresent and ridicule me in their articles. His brother also (one H. S. Foote) had planted himself close in front of me as I was addressing the jury, and there opened himself upon me as an active and persistent battery of great grins, grimaces and abdominal quaking—after the manner of ancient Chinese warfare. But as soon as I had made that statement concerning W. W. Foote and had caused him to be served with that subpoena, instantly both he and his coadjutor brother “ceased from troubling.” The brother at once limbered up his battery, “advanced to the rear,” and thereafter remained in a distant part of the room, without grin or grimace, an “innocuous desuetude.” At the same time W. W. Foote withdrew

from the table used by counsel in the case, took up a position at the side of the room among the spectators and remained quiet, uttering not another word in the case—traitor attorney abandoning traitor client. Several of the spectators expressed to me their wonder at what it could be that had so suddenly and completely stunned W. W. Foote. To a few persons I imparted the secret. I had only put my hand upon the rein connecting with the bit which had been placed in his mouth by The Southern Pacific Company, as stated on pages 64-75 above.

Neither of those humans—W. W. Foote and his brother—had ever had any provocation from me. In attempting their practices against me, they no doubt thought that such a course would be of some material advantage to themselves. They speedily saw that flight was more to their advantage—and they fled.

A Sample Piece of Trickery Characteristic of The Southern Pacific Company.

Among the practices resorted to at this trial, the following deserves mention. It illustrates the character of The Southern Pacific Company.

The statute prescribing the order of the trial (C. C. P. of Cal., §607) is as follows :

“When the jury has been sworn the trial *must proceed in the following order*, unless the Judge for special reasons otherwise directs: 1. The plaintiff, after stating the issue and his case, must produce the evidence on his part. 2. The defendant *may then open his defense* and offer his evidence in support thereof,” etc., etc.

The defendants had made elaborate preparation to try the case by jury. To that end, John Garber, the

leading court attorney of The Southern Pacific Company, who appeared as the leading counsel on the part of those of the defendants who were Justices of the Supreme Court of the State, had prepared, with his characteristic industry and cunning, an elaborate speech to be delivered by way of *opening the defense*. By virtue of the settled practice followed in trials, as well as the express provision of the statute just quoted, the time for him to deliver that speech would have been after I had put in the evidence which I had stated that I would produce. When, however, it was seen from my opening statement that the evidence I was about to produce could not be met, the defendants resolved, with the help of the corrupt Federal Judge who was presiding, to stop the case then and there. But before making the motion, John Garber, their leading counsel, stood up and requested the Court to allow him to make to the jury, *at that time*, his speech opening the defense. No reason was given for so unusual a proceeding, but, though I opposed it, the request was at once granted. He then, upon the false pretense of stating what he intended to prove, delivered to the jury his carefully prepared speech, professing to justify all the outrages which had been put upon me, repeating all the trickery and lies of the disbarment, and pouring out upon me lies upon lies, slander upon slander, and, in the form of announcing that speech, the daily newspapers were made to publish against me libelous articles—that being the very purpose he had in view in making the speech. One of the lies of that speech was that my brief had been announced in the newspapers before it was filed in the office of the clerk of the Supreme Court; another was that my brief had been prepared, not in good faith,

but to blackmail the Justices of the Supreme Court. He also declared that if only an apology would be made the disbarment would be immediately withdrawn—and *The Examiner* newspaper was made to publish that offer. As soon as John Garber had finished that speech and had sat down—a speech full of lies—mean, scoundrelly lies—a speech, the very foundation of which was a lie, for it was delivered upon the lying pretense of an intention to produce evidence—as soon as he had sat down, one of his colleagues arose and asked the Court to forbid the introduction of evidence and to dismiss the suit then and there, and the motion was forthwith granted as above stated.

Such is John Garber, the chief court attorney of The Southern Pacific Company.

The Hand of The Southern Pacific Company.

The facts which occurred at that trial, and which have just been stated, are further evidence, and a confession that the particular crimes stated in the preceding pages were committed and have been upheld by The Southern Pacific Company, and that The Southern Pacific Company own the Supreme Court of California. So well had I concealed the fact that I had proof of the hand of The Southern Pacific Company in the crime which had been committed upon me, that, in utter ignorance that I could produce any such proof, The Southern Pacific Company came forward with their own private attorneys and assumed the defense of the suit; and every one of the Justices who was a defendant in the suit came into court displaying, in the attorney

who appeared for him, a badge still further certifying that he was owned by The Southern Pacific Company. At the foot of the answer filed in the suit by each Justice respectively, the name of John Garber appeared as his attorney—John Garber, the chief court attorney of The Southern Pacific Company. As already stated, John Garber also appeared in court as the leading counsel of the defense. R. B. Carpenter, known as “Judge Carpenter,” another agent of The Southern Pacific Company, also appeared at the trial and assisted actively in the defense. W. W. Foote was also produced and set upon me, as already stated. Peter F. Dunne, a skillful jury lawyer employed by The Southern Pacific Company, was also kept in attendance in the court room to assist before the jury. It had been the firm and resolved intention of The Southern Pacific Company who were defending the suit, and of the persons named as the defendants, and of the Federal Judge presiding—it was the settled and resolved intention of all of them acting in concert—to try the case by jury and to obtain a verdict of the jury against me. And that intention was abandoned only when it was seen, not only what evidence I was about to introduce, but, still further, how completely The Southern Pacific Company and their agents, the corrupt judges of the Supreme Court of California, had been led into an ambuscade and, in the fact that it was the attorneys of The Southern Pacific Company who were conducting the defense, made to furnish further evidence that it was The Southern Pacific Company who had committed upon me and kept up the great crime of the disbarment. And the fact that as soon as all this was seen, the persons named as defendants and The Southern Pacific

Company who were conducting the defense and the Federal Judge presiding—all acting in concert—the fact that they *then* instantly put an end to the trial and wheeled about and fled, is itself a manifest proof, a confession that The Southern Pacific Company made the disbarment and have kept it up, and along with it have perpetrated and kept up the outrages committed by means of the Supreme Court of California upon Mrs. Levinson and her daughters, as shown in the preceding pages—and that The Southern Pacific Company own the Supreme Court of California.

The Moral Power of an American Jury.

At this trial all the Justices of the Supreme Court of California, the Attorney-General of the State, a United States District Judge, and the enormous combination of railroad and steamship corporations called The Southern Pacific Company, supported by all the newspapers of San Francisco, by all the social influences which such a combination carried with it, backed, too, by the corrupt Federal Judge who presided at the trial,—all that combination broke down ignominiously before only one single American citizen, appearing against them without an advocate,—broke down ignominiously only because that one citizen was armed with the truth and sustained by the presence of an American jury of twelve men. All that gigantic combination, though armed and intrenched with all the power of both the State and Federal governments, quailed and fled under the lash of truth—a lash laid unsparingly on—before the very jury whom they themselves had taken part in selecting.

The outcome of the trial was a mighty testimonial to the power of truth and the virtues of an American jury. The particular jury to whom so great a compliment was paid were the following residents of San Francisco :

DAVID E. ALLISON,
CHARLES W. DOE,
JAMES HAMILTON,
WALTER C. RUGH,
MONSON RUSSELL,
WALTER B. WEBSTER,
ROBERT H. DALEY,
JOHN C. ADELSDORFER,
DAVID H. BEEDE,
EDWARD MCGUIRE,
EMILE CUCUEL,
LEWIS E. LEE.

3. The Making of Another Appeal to the People.

On Nov. 8, 1898, a general election of State and county officers was held throughout California. At that election Thomas B. McFarland and Wm. C. Van Fleet, two of the corrupt Judges of the Supreme Court, were the candidates of the Republican party for re-election for Associate Justices of the Supreme Court. At the same election Wm. F. Fitzgerald, one of the corrupt Judges of the Supreme Court, who had joined in the crime of the disbarment—his term as Attorney-General of the State being about to expire—was the candidate of the same political party for City and County Attorney of San Francisco. It was a time of a

great wave of strength for the Republican party throughout the State of California.

At this election I again offered myself to the electors of San Francisco as an independent candidate for Judge of the Superior Court, and I again issued a short circular to the electors, entitling it, "An Appeal to the People." The circular gave a brief statement of the crime of the disbarment and of the criminal use of the Supreme Court of the State in upholding the Justice Ralph C. Harrison in his villainy and in denying justice to his betrayed victims, Mrs. Levinson and her daughters, and stated also that all that criminal use of the Supreme Court of the State was the work of The Southern Pacific Company. In the circular I not only announced my own candidacy, but appealed also to the electors to prevent the re-election of Thos. B. McFarland and Wm. C. Van Fleet as Justices of the Supreme Court and the election of Wm. F. Fitzgerald as City and County Attorney of San Francisco. For some weeks prior to the election that circular was, by the voluntary assistance of many individual citizens, distributed extensively throughout San Francisco.

As a result of that "Appeal to the People" I was given by the electors of San Francisco, according to the official returns, 9,887 votes for Judge of the Superior Court, a number which, however, was insufficient to elect. And although the Republican candidates generally were elected by very large majorities, both in San Francisco and throughout the State, yet in San Francisco, where my "Appeal to the People" was circulated, Wm. F. Fitzgerald was defeated, and the Justices McFarland and Van Fleet each received a far smaller vote than either of the opposing candidates.

Taking the State as a whole, the re-election of Justice Van Fleet was defeated. In San Francisco the vote for Justices of the Supreme Court was as follows:

| | |
|----------------|---------|
| Conley (D.) | 25,598. |
| Van Dyke (D.) | 23,762. |
| McFarland (R.) | 21,715. |
| Van Fleet (R.) | 20,436. |

And in the State as a whole, as follows:

| | |
|----------------|----------|
| Van Dyke (D.) | 117,287. |
| McFarland (R.) | 113,118. |
| Conley (D.) | 109,742. |
| Van Fleet (R.) | 108,212. |

If my circular had been laid before the people throughout the whole State, the re-election of McFarland also would have been defeated.

4. A Suit for a Mandamus in the United States Circuit Court.

In the Act of Congress quoted on page 399 above, it is provided that there shall be liability "to the party injured in an action at law, suit in equity, or *other proper proceeding* for redress."

That Act was passed in 1870, and the 14th amendment of the Constitution was adopted in 1868, and, upon a case which arose in 1867, the Supreme Court of the United States had just decided that a "*proper proceeding*, for redress" for an attorney wrongfully disbarred, is a writ of mandamus to compel the restoration of his rights.*

* *Ex parte Bradley* 7 Wall 364.

I therefore commenced on August 1, 1898, in the United States Circuit Court at San Francisco, against the seven Justices of the Supreme Court of California, namely, the Chief Justice, Wm. H. Beatty, and the Associate Justices, Charles H. Garoutte, Ralph C. Harrison, Frederick W. Henshaw, Thos. B. McFarland, Jackson Temple and Wm. C. Van Fleet—a suit for a writ of mandamus to compel them to set aside the disbarment and to restore to me the right to practice my profession. In the complaint I stated in detail the whole series of outrages against my clients, Mrs. Levinson and her daughters, and myself, which are stated in the preceding pages up to and including the final false decision for the two Newmans, and stated also the part taken by The Southern Pacific Company in those outrages, precisely as stated in this paper. Upon being brought into Court, the seven Justices thus sued, no longer challenged the facts. They admitted the truth of all that was alleged against them—they admitted all their corruption and wickedness, which was stated in the complaint against them just as it is here—they admitted their own characters as false, corrupt and wicked judges and as the corrupt and wicked agents of The Southern Pacific Company—admitted it all to be true, and rested their defense solely upon a pretense that the United States Circuit Court was powerless to give relief, that is, upon a demurrer setting up that pretense. It was, of course, no longer of any use for them to avoid being represented by The Southern Pacific Company's attorneys; and the attorneys who appeared for them were John Garber and Robert V. Hayne. Upon that demurrer the case was submitted for decision on Nov. 21, 1898, before Wm. W. Morrow,

the United States Circuit Judge for the Northern District of California. The case as thus submitted to Judge Morrow was held by him as a case under consideration, until April 10, 1899—four months and twenty days—a period which covered the biennial session of the Legislature of California, which was held in January, February, and a part of March, 1899. On April 10, 1899, Judge Morrow caused an order of the Circuit Court to be entered sustaining the demurrer and dismissing the case. Neither in the order nor anywhere in the records or files of the Court has any reason for the decision been stated.

The case known as *Railroad Tax Cases* (13 Fed. 722), several times cited in preceding pages, in which at the suit of The Southern Pacific Railroad Company all that part of the Constitution of California which provided for the taxation of railroad property was declared void and set aside—a case in which, to protect the assumed rights of that corporation, the deliberately expressed will of the *people of California* was overthrown—was decided in precisely three weeks and six days from the day when it was submitted to the Court; and in giving the decision two Federal Judges (Justice Field and Judge Sawyer) each filed an elaborate written opinion. Now, mark the contrast. My case, the case of an American citizen seeking relief from the wrongs committed, through corrupt officials of the State, by an organization of corporations of which The Southern Pacific Railroad Company is a part—seeking relief upon the very same guaranties of the Constitution of the United States—seeking relief from the destruction of my property and from the deprivation of my civil rights—was not decided until four months and twenty

days after it was submitted for decision—was not decided until the State Legislature had convened, held its session and adjourned, thus keeping me from applying to the Legislature for relief—and then relief was denied, and nowhere in the records or files of the Court is there any statement of the reason of the decision.

AN APPEAL TO THE PEOPLE

To the American People; and Particularly to
the People of the State of California.

The Supreme Court of the State of California in the Possession of Criminals.

In the preceding pages I have shown—and have given the proof—that for almost five years (at the least) the Supreme Court of the State of California has been—that it now is—in the possession of criminals; that during all that time the Supreme Court of this State has been used—that it is still being used—as an instrument of crime.

The disbarment (described on pages 107-289 above) is a great and most foul crime. The false report of the disbarment which has been placed in the California Reports (described on pages 281-287 above) is a crime. The disposition of every one of the three appeals, mentioned on pages 289-295 and pages 305-391 above, is a crime. The disbarment, the false report of it in the California Reports, and the disposition of those three appeals—not only has every one of those acts been in itself a crime, but they are all parts of one great crime. Of all this the full and abundant proof is given in the preceding pages.

It must not be supposed that the particular crimes

shown in the preceding pages are the only crimes which within the last five years have been committed, or that none other are being committed, by the authors of the particular crimes here shown or by the instrumentality of the Supreme Court of this State. I have proved these crimes. By means of the particular crimes here shown, I have been subjected to so prolonged and so extreme suffering, that I have been driven by the torture to collect and show the proof that they are crimes.

The Criminals.

Of the individuals who, as tools of the gigantic combination of corporations called The Southern Pacific Company, have committed and are keeping up the particular crimes pointed out above, six are still holding office as Justices of the Supreme Court of this State, being six of the seven Justices constituting the Court. These six, and their terms of office, are as follows:

The Chief Justice:

Wm. H. Beatty (for a term ending in January, 1903).

The Associate Justices:

Charles H. Garoutte (for a term ending in January, 1903).

Ralph C. Harrison (for a term ending in January, 1903).

Frederick W. Henshaw (for a term ending in January, 1907).

Jackson Temple (for a term ending in January, 1907).

Thos. B. McFarland (for a term ending in January, 1911).

Another, John J. De Haven, was in June, 1897, appointed the District Judge of the United States for the Northern District of California (*i. e.*, at San Francisco), an office which he still holds.

The two others, namely, Wm. F. Fitzgerald and Wm. C. Van Fleet, were, on November 8, 1898, relegated to private life by the votes of the people.

But in March, 1898, The Southern Pacific Company, through their evil agents the Justices of the Supreme Court of California, set aside the primary election law of the State. They then, by means of the party "machine" and the party "bosses," obtained control of the nominating conventions of the Republican party, and by so doing dictated the choice of the Republican candidate for Governor of the State, and their candidate was elected. And so in July, 1899, that Governor appointed Wm. F. Fitzgerald a Judge of the Superior Court of Los Angeles County, and Wm. C. Van Fleet to the office of Code Commissioner of the State. The Southern Pacific Company, thwarting the will of the people (as they are accustomed to do), have thus restored their evil agents to high offices in the Government of the State.

In the crimes committed in the Newman & Levinson case and shown in the preceding pages, the central figure of the criminals is Ralph C. Harrison, evil agent of The Southern Pacific Company, and holding from them an assignment as Associate Justice of the

Supreme Court of the State of California. In his conduct toward Mrs. Fanny Levinson and her daughters (shown on pages 16-59 and on pages 97-106 above) he proved himself the vilest and blackest of scoundrels. The efforts to whitewash him which have been made by his masters The Southern Pacific Company and their evil agents his associates, in *The Record-Union* and in the act disbarring the attorney of his victims and in the false and wicked report of that disbarment which he and they placed in the California Reports and the efforts toward the same end which, after denying a hearing of the case, have been so foully and wickedly made in the final decision for the two Newmans,—all those efforts confess his guilt, confirm the proof of his unspeakable villainy. As pointed out on pages 253-255 above, his masters and their tools, who are his associates, have been unable to face the facts and have been driven from the field. The result of all those efforts goes to prove the truth of Carlyle's declaration, quoted on page 255 above.

In addition to the unspeakable villainy committed by him upon Mrs. Levinson and her daughters up to the time when their cause was taken to the Supreme Court, there is his foul agency in the crime of the disbarment and in the denial of a hearing of each of their three appeals and in the false, corrupt and malevolent decisions made against them, his wronged and betrayed clients, the three defenseless women whose money he received and appropriated as his fee for protecting them. It is of course no answer to say that he did not physically and literally subscribe his name to the disbarment or to any of those wicked decisions. He plotted all that series of wicked acts, and from the time he con-

trived the vile plot he has pulled the wires. All those crimes have been committed in his behalf, and the Civil Code of California (expressing only a plain truth) declares that (Sec. 3519): "He who can and does not forbid that which is done in his behalf is deemed to have bidden it."

But although Ralph C. Harrison is the central figure, he is not the chief criminal. Fully his equals in villainy and crime are the persons who, as the corrupt judges of the Supreme Court of this State, and at the instigation and with the backing of their masters, The Southern Pacific Company, have committed and are keeping up the particular crimes shown in the preceding pages.

The worst, the most detestable, and far the most dangerous criminal that exists on the earth is a false, lying, corrupt, wicked judge of a higher court. And such criminals are Wm. H. Beatty, Chas. H. Garoutte, Ralph C. Harrison, Frederick W. Henshaw, Thos. B. McFarland, and Jackson Temple, six of the seven Justices of the Supreme Court of the State of California. They are criminals. They have the minds and feelings of criminals. There exists nowhere, not in any jail or penitentiary, any wretch with a mind or feelings more criminal, malevolent or wicked. They are hardened, deliberate and persistent criminals—hardened, deliberate and persistent traitors to the most sacred of public trusts. They are enemies of mankind. Of all this the full and abundant proof is given in the preceding pages.

It is by means of such tools that The Southern Pacific Company are in possession of the Supreme Court of California and of the government of the State.

The State of California an Appanage of The Southern Pacific Company.

Is the State of California free? Apply the test stated by Judge Caldwell and quoted on page 227 above: "Reduced to its last analysis, the intelligent and impartial administration of justice is all there is of free government." Tried by any such test the State of California is not free. It is an arbitrary despotism dominated by The Southern Pacific Company.

Is the State of California in truth a part of the United States? Apply the test. The Constitution of the United States declares that "No State shall * * * deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." It also declares that its purpose is "to * * * establish justice * * * and secure the blessings of liberty." It also declares that "This Constitution * * * shall be the supreme law of the land, and the judges in every State shall be bound thereby." * * But for almost five years (at the least) The Southern Pacific Company, through their possession of the Supreme Court of the State, have made the State of California nullify and set at naught all those provisions of the Constitution. The State of California is not then in truth a part of the United States. It is in truth only a dependency, an appanage of The Southern Pacific Company and their allies.

The chief function of the United States Government in the State of California is that of a protectorate of the corrupt and irresponsible oligarchy called The Southern Pacific Company, to keep the people of the State under for the benefit of that oligarchy. Instances in proof of

this fact are mentioned in preceding pages. As already stated (see pp. 64-75 above), from October, 1895, to May, 1899—three years and seven months, and, until its use for such a purpose was no longer of value—the United States Circuit Court at San Francisco was used to prevent the Board of Railroad Commissioners of the State from reducing the freight charges on The Southern Pacific Company's railroads, and the people of the State were made to contribute a false decision of their Supreme Court and the services of their Attorney-General and the sum of \$20,000 in addition, to assist in fastening upon themselves the shackles and chains. The act by which it was done was *called* an injunction suit; but the so-called suit was not tried, nor was any trial intended. It was a suit only in form, only by pretense, the attorneys on both sides being owned by The Southern Pacific Company. That so-called injunction suit was in truth only an administrative act of the United States Government, by which the State of California was held under for the benefit of The Southern Pacific Company.

In rendering judgments in favor of the great corporations, or in favor of Chinese aliens in cases where, because of their furnishing cheap labor, they have been backed by the deep and openly avowed sympathies of the great corporations,—in rendering such judgments the United States Circuit Court at San Francisco has been swift and liberal in enforcing the guaranties of the Constitution of the United States that “no State shall * * deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.” In what other case has it done anything of the kind?

And, in particular, when did that Court ever uphold that guaranty in favor of a single American citizen and against an act of wrong and oppression instigated or backed by any of the great private corporations? How the American citizen is treated in such a case may be seen on pages 399-412 and 414-417 above. But in favor of the great corporations and of alien Chinese laborers, the Court has given readily all that is asked, and has said (*Parrott's Case*, 6 Sawyer):

* * "To deprive them [the Chinese] of the right to labor, is to consign them to starvation. The right to labor is, of all others, after the right to live, the fundamental, inalienable right of man, wherever he may be permitted to be, of which he can not be deprived, either under the guise of law or otherwise, except by usurpation and force."

And again (in the same case):

"To deprive a man of the right to select and follow any lawful occupation, that is, to labor or contract to labor, if he so desires and can find employment—is to deprive him of both liberty and property, within the meaning of the 14th Amendment and Act of Congress."

Slavery in the State of California.

In the San Francisco newspapers of April 8, 1898, one of the professors of the University of California was reported to have delivered, the day before, a lecture on "Liberty and Authority," in which, among other things, he said:

"There is slavery in America to-day which is worse than that of the Africans of the South in the days before the Civil War. These persons [white American citizens] must do what they are told or die a death of lingering horror."

That such a condition actually exists in the State of California is proved and fully demonstrated in the foregoing pages. In the disbarment, falsely and wickedly inflicted, and falsely and wickedly reported, and falsely and wickedly kept up, the only element of slavery lacking is the consent of the victim. This is self-evident, and it has been declared by the Supreme Court of the United States in giving judgment in favor of a Chinese alien laborer, in the case of *Yick Wo v. Hopkins*, 118 U. S. (see the language quoted on p. 220 above.)

Innocent, Defenseless Women Made Outlaws by the State of California.

The cause of Mrs. Fanny Levinson and her daughters Julia and Ada is stated on pages 16-59 and on pages 97-106 above. The facts are stated fully, clearly and without the least contradictory evidence, in the record of the case which, after being printed at their expense, was filed by them in the Supreme Court upon the appeal stated on page 55 of this paper. It is a plain, simple, just case. The estate earned by their natural and actual protector, the late John Levinson, and which at his death was left by him for their support, has been withheld from them fraudulently and forcibly by his surviving copartners, Wm. J. Newman and Benjamin Newman. At great sacrifices they have seasonably and properly taken their cause to the Supreme Court of the State of California and asked for redress. By the means shown in detail in the preceding pages; The Southern Pacific Company have caused these three defenseless women to be denied the right to

an attorney, to be denied a hearing, to be denied justice, to have their cause covered with infamous, scoundrelly lies,—and all by the instrumentality of the Supreme Court of the State of California. That evil and terrible organization has thus caused the widow and her children, innocent and defenseless persons, to be made actual outlaws by the State of California.

To overcome such an outrage, ought not the whole State to be aroused?

Compared With the Dreyfus Case.

On pages 4-5 above the case here is compared with the Dreyfus case. Now, let that comparison be carried further.

Take first the Dreyfus case. It is probable that there an offense had been committed, that some one in the army had been selling military secrets.

Take now the disbarment of the attorney in the case here. That disbarment has been inflicted *absolutely without cause*, and *with the full knowledge by those inflicting it that it was being inflicted absolutely without cause*. This is shown fully and demonstrated step by step on pages 107-289 above. Any intelligent person who can read, by following what is there pointed out, may see for himself that the *disbarment was inflicted absolutely without cause*—that the brief referred to in it was in every respect a proper and just and meritorious treatise upon the case—that the disbarment is in the full sense of the word a crime.

Compare the punishments inflicted. This I leave to the reader's consideration.

The Dreyfus case was tried in secret. The victim was not allowed to know upon what evidence he was being condemned. In the case here the judgment of disbarment was made in precisely the same way. This has been pointed out in detail and the proof given.

The Dreyfus conviction was made according to the forms of law. In the case here the law and the Constitution and natural justice, and the plain truth have all been, in the judgment of disbarment, openly and insolently violated and trampled down. This has all been shown in detail on pages 107-289 above.

Take now the disposition which has been made by the Supreme Court of California of the cause of Mrs. Fanny Levinson and her daughters.

Dreyfus was allowed the help of an attorney. Here the attorney of Mrs. Levinson and her daughters was struck down; they were wickedly deprived of the right to an attorney.

The cause of Mrs. Levinson and her daughters—every one of their three appeals—has been decided against them in secret, without a hearing. In this respect their case resembles that of Dreyfus. But (as shown on pages 107-289 and 305-391 above) the judgments made by the Supreme Court of the State of California against Mrs. Fanny Levinson and her daughters has been based upon the most infamous and outrageous and malevolent lies of those pretending to act as the Judges.

I therefore say that the outrages and crimes which the Supreme Court of the State of California has been made to commit in the case here, far exceed anything that appears in the Dreyfus case.

No Law or Right in the State of California.

Sir Edward Coke, in his Institutes (published in 1629) says of the word "right" as used in Magna Charta that "right is taken here for law," and he then says (p. 50): "It is called right because it is the best birthright the subject hath, for thereby his goods, lands, wife, children, his body, life, honor, and estimation are protected from injury and wrong." In the passage quoted on page 227 above Henry Clay Caldwell has lately affirmed, although in a different form, the same plain truth.

This is a truth which should be felt by every man and woman. If you have property, it may be taken from you, upon a wrongful claim, by false judges. And you may be deprived of your liberty or your life in the same way. If you leave property for a wife or child it may be taken by robbery, and the robbery upheld, as the robbery of Mrs. Fanny Levinson and her daughters has been upheld, by false judges. If you are poor, do you not wish to be at least free? And how can you endure to contemplate the fate which your children have before them, when the Supreme Court of the State is in the possession of criminals, when they use the court for crime and are allowed so to do?

Let now any intelligent person examine for himself the facts stated, the proof given, in the preceding pages of this paper. So long as the disbarment (described on pages 107-289 above) is held in force, so long as the decision for the two Newmans (described on pages 305-391 above) is persisted in—so long as such acts are done and kept up by the Supreme Court of the State of California, there is in fact no law or right in the State. That which is called law, that which has been written down in constitutions or in statutes—is only so much

material with which to juggle, and to be applied or withheld, affirmed or denied, only at the arbitrary dictate of criminals.

The Supreme Court of California A Moral Calamity.

On page 275 above, and again on page 318, it is properly pointed out that "The Southern Pacific Company have no lawful or just right to be the Supreme Court of California."

Only a few years ago *The American Law Review* pronounced the Supreme Court of the State of California to be "not a benefaction but a calamity" (see p. 63 above). At that time the Supreme Court of California was, as it still is, in fact, merely a bureau of The Southern Pacific Company. I wish now to call attention to the fact that in their administration of the Supreme Court of California, The Southern Pacific Company are maintaining in the State a great and continual moral calamity.

The fact that, as above shown, six of the persons who are now Justices of the Supreme Court of California are unspeakably false and corrupt Judges, and, that by means of them, the Court is possessed and used for evil purposes by The Southern Pacific Company—these facts are widely known in California and particularly in San Francisco. In San Francisco these facts are the common talk. The fact that in the Supreme Court of California the truth, the Constitution and the law are of no protection, is also widely known. The foul and extreme outrages and crimes perpetrated and kept up upon Mrs. Levinson and her daughters and upon myself for attempting properly to present their case to the Court—are widely known, and partic-

ularly in San Francisco. In San Francisco even boys talk of these things and cite them as proof of the foolishness of being honest.

Is not such a condition of things necessarily a great and continuing moral calamity?

Impeachment an Inadequate Remedy.

Upon this subject Thomas Jefferson has left his testimony as follows:

In the *Autobiography*:

"We have gone even beyond the English custom, by requiring a vote of two-thirds, in one of the Houses, for removing a Judge; a vote so impossible when any defense is made, before men of ordinary prejudices and passions, that our Judges are effectively independent of the nation. This ought not to be * * * I deem it indispensable to the continuance of this government, that they should be submitted to some practical and impartial control."

In a letter to Edward Livingston (March 25, 1825):

"This member of the government [the judicial] was at first considered to be the most harmless and helpless of all its organs. But it has proved that the power of declaring what the law is, *ad libitum*, by sapping and mining, slyly and without alarm, the foundations of the constitution, can do what open force would not dare to attempt."

In a letter to Thomas Richie (Dec. 25, 1820):

* * "Having found from experience that impeachment is an impracticable thing, a mere scarecrow, they consider themselves secure for life; they skulk from responsibility to public opinion."

In a letter to Judge Roane (Sept. 6, 1819) :

* * "For experience has already shown that the impeachment it [the Constitution] has provided is not even a scare-crow * * * It should be remembered, as an axiom of eternal truth in politics, that whatever power in any government is independent, is absolute also; in theory only, at first, while the spirit of the people is up, but in practice, as fast as that relaxes. Independence can be trusted nowhere but with the people in mass. They are inherently independent of all but moral law."

And in a letter to Mr. Jarvis (Sept. 28, 1820) :

* * "You seem to consider the judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy. * * * I know no safe depository of the ultimate power of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education."

It must be borne in mind, however, that in Jefferson's time the population of the nation consisted mainly of prosperous farmers and proprietors of plantations and well-to-do merchants, and that any man who possessed health and strength could, whenever he wished, obtain a rich farm from the public domain. Now, the public domain has long been exhausted. All available lands are held by private owners. The relations of the people have become extremely complicated. The opportunities which the individual then had to be independent are now closed to him. No such organization as The

Southern Pacific Company then existed or had even been dreamed of. If impeachment was then an impracticable remedy against false and corrupt judges, think how much more impracticable it is now.

The Only Remedy Is With the People Themselves. The Lessons of English History.

On pages 223-229 above, reference is made to the experience of the people of England with the arbitrary and corrupt judges of the Tudors and the Stuarts. There the remedy came from the people themselves. It was in obedience to the demands of the people that Empson and Dudley were punished. The arbitrary and corrupt courts of the Stuarts were shaken off only by means of two revolutions. In the one revolution Charles the First was put to death, and Oliver Cromwell placed at the head of the Government. In the other revolution, that of 1688, the House of Stuart was permanently expelled. And from that day to this the character of English judges has been high and pure.

And in the United States, in the State of California, the only remedy for the oppression of arbitrary, corrupt and wicked Judges is with the people themselves. And this truth has an especial emphasis where, as in the State of California, so powerful and terrible a conspiracy as the gigantic organization of corporations called The Southern Pacific Company are in possession of the Supreme Court of the State and, by means of it, use the power of the whole people for the destruction of individual after individual.

"The Greatest of All Possible Virtues."

In connection with the language quoted on pages 161-165 above, Edmund Burke on the same occasion said :

" Lord Bacon has very well said that ' revenge is a kind of wild justice.' It is so, and without this wild, austere stock there would be no justice in the world. But when, by the skillful hand of morality and wise jurisprudence, a foreign scion but of the very same species is grafted upon it, its harsh quality becomes changed, it submits to culture, and, laying aside its savage nature, it bears fruits and flowers, sweet to the world, and not ungrateful even to heaven itself, to which it elevates its exalted head. The fruit of this wild stock is revenge regulated, but not extinguished—revenge transferred from the suffering party to the communion and sympathy of mankind. This is the revenge by which we are actuated, and which we should be sorry, if the false, idle, girlish, novel-like morality of the world should extinguish in the breasts of us who have a great public duty to perform.

" This sympathetic revenge which is condemned by clamorous imbecility is so far from being a vice that it is the greatest of all possible virtues, a virtue which the uncorrupted judgment of mankind has in all ages exalted to the rank of heroism. To give up all the repose and pleasures of life, to pass sleepless nights and laborious days, and what is ten times more irksome to an ingenuous mind, to offer oneself to calumny and all its herd of hissing tongues and poisoned fangs, in order to free the world from fraudulent prevaricators, from cruel oppressors, from robbers and tyrants, has, I say, the test of heroic virtue and well deserves such a distinction. The Commons, despairing to

attain the height of this virtue, never lose sight of it for a moment."

The principle thus declared by Burke is in the Bible stated in a declaration of the Deity, as follows (*Isaiah* XIII: 11, 12):

"And I will punish the world for their evil and the wicked for their iniquity; and I will cause the arrogancy of the proud to cease, and I will lay low the haughtiness of the terrible. I WILL MAKE A MAN MORE PRECIOUS THAN FINE GOLD, EVEN A MAN, THAN THE GOLDEN WEDGE OF OPHIR."

Lord Bacon, in the essays, defines *goodness* thus:

"I take goodness in this sense, *the affecting of the weal of men*, * * of all virtues and dignities of the mind the greatest, being the character of the Deity; and without it man is a busy, mischievous, wretched thing, no better than a kind of vermin."

I therefore appeal to the people, to their goodness, to their "greatest of all possible virtues."

To the People of San Francisco:

While I write these pages it has already been for almost five years my lot to make in your midst such a struggle for human right as was never before made in this nation. The goodness, the "greatest of all possible virtues" of the people here has been greatly, even though not sufficiently, testified by the responses which have been made to the two short and inadequate appeals mentioned in preceding pages.

To you particularly I still appeal. In this place the outrages upon me have been committed and are unrelentingly enforced. How great and atrocious those outrages are, how effectively they strike down the rights of every individual—all this I have here striven to show. Here I have been compelled to make so long and terrible a struggle. In this place, among you, from you, by you, I still ask particularly such encouragement as shall make the struggle successful and a mighty landmark of human right and justice.

In San Francisco a new charter has lately been adopted. In the hope that the evil and irresponsible oligarchy called The Southern Pacific Company will allow the new charter of San Francisco to stand, various candidates for the public offices created by it are soon to be placed before the people of San Francisco for their choice. The most important office for which an incumbent may be thus chosen, is the great office of Mayor of San Francisco.

Some of the prospective candidates for these offices have already sought to recommend themselves by praiseworthy conduct in respect to public expenditures, the public taxes and in proposing various public improvements, such as the extension of parks, the beautifying of the city, and the improvement of its sanitary condition. If the new charter should be allowed to stand, candidates will ask for votes by announcing their positions upon such questions.

But in San Francisco and throughout the State there is absolutely needed a still more fundamental public improvement, namely, security for the fundamental rights of a human being. That improvement can be had only by arousing public opinion.

In ancient Rome the elder Cato, whenever he spoke, no matter upon what subject, would close by declaring solemnly, "*And Carthage must be destroyed!*" And in consequence of the resolve thus urged, the great, wealthy, corrupt and perfidious Carthage was destroyed.

A city and a State where, when a citizen dies, his defenseless family can be subjected to such outrages and oppression as have been deliberately, wickedly and relentlessly visited here upon Mrs. Fanny Levinson and her daughters—such a city, such a State, has more fundamental needs than parks and the municipal ownership of utilities and beautiful streets and splendid houses.

A city and a State where a citizen and his family can be deliberately and wickedly and persistently done to death through years of torture and openly, as a "punishment," a "penalty" upon him for advocating before a tribunal established by the people as a court of justice, the cause of such a family of three defenseless women, against the unspeakable treachery and villainy of their betrayers and despoilers—such a city and such a State has a more fundamental need than fine parks, fine streets and fine houses.

A city and a State, where false, lying, malevolent wretches, the foulest and most dangerous enemies of mankind, sit as Justices of the Supreme Court of justice—where, as here, it is the common talk that such are their characters—where it is absolutely true and commonly understood that such corrupt judges are the foul and wicked agents of so powerful, terrible and evil an organization as The Southern Pacific Company—such a city or State is not to be saved by owning its

public utilities or by beautiful parks and handsome streets and houses.

I therefore urge the people to give their votes at any and every election to those candidates, if any there shall be, or to that political party, if such there shall be, from whom there shall be heard a public denunciation of the false and corrupt Judges of the Supreme Court of this State and a demand that such false and corrupt Judges be removed and made an example. To such candidates, to such a political party, as shall refuse any such expression, the words of the gospel are applicable:

“Woe unto you, scribes and Pharisees, hypocrites ! for ye pay tithe of mint and anise and cummin, and have omitted the weightier matters of the law, judgment, mercy, and faith; these ought ye to have done, and not to leave the other undone.

“Ye blind guides, which strain at a gnat and swallow a camel.

“Woe unto you, scribes and Pharisees, hypocrites ! for ye make clean the outside of the cup and of the platter, but within they are full of extortion and excess.

“Thou blind Pharisee, cleanse first that which is within the cup and platter, that the outside of them may be clean also.

“Woe unto you, scribes and Pharisees, hypocrites ! for ye are like unto whited sepulchres, which indeed appear beautiful outward, but are within full of dead men’s bones, and of all uncleanness.”

The following lines of Sir Wm. Jones, though written particularly for Great Britain, state a truth equally important here:

What constitutes a state?
 Not high-raised battlement or labored mound,
 Thick wall or moated gate;
 Not cities proud with spires and turrets crowned;
 Not bays and broad-armed ports,
 Where, laughing at the storm, rich navies ride;
 Not starred and spangled courts,
 Where low-browed baseness wafts perfume to pride.
 No:—men, high-minded men.

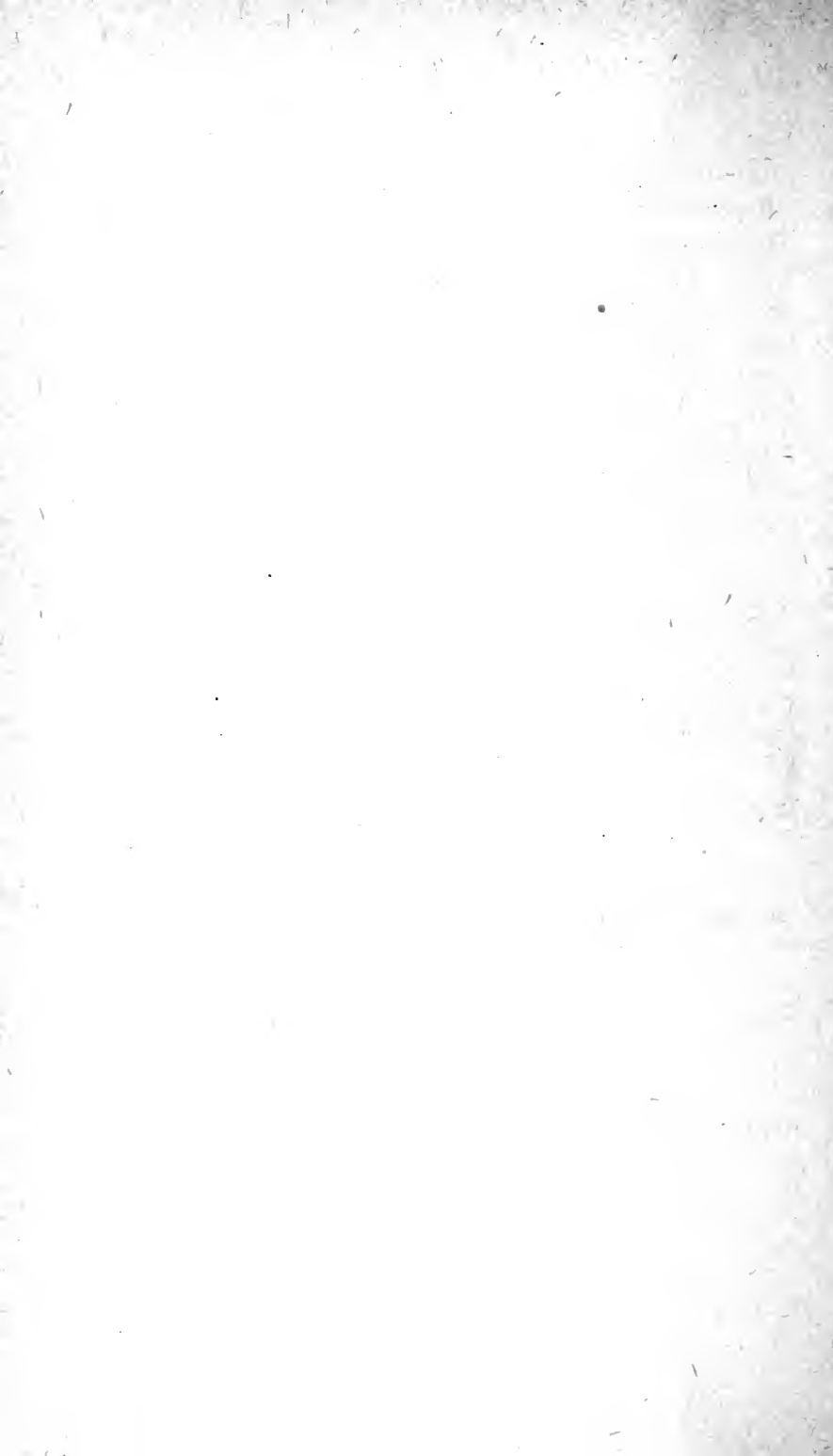
* * * *

Men who their duties know,
 But know their rights, and, knowing, dare maintain,
 Prevent the long-aimed blow,
 And crush the tyrant while they rend the chain.
 These constitute a state.

HORACE W. PHILBROOK.

San Francisco, Cal.,

August, 1899.



APPENDIX

[THE OPINION OF JUDGE WALLACE ON DECIDING
THE CASE IN THE SUPERIOR COURT,
JANUARY 23, 1893.]

This action, gentlemen, is brought upon allegations of fraud, in fact, actual fraud, as I understand it; the general charge is that these defendants, upon the death of their late partner, undertook in the ways charged, to cheat the mother and sisters of the deceased man out of their just share of the assets of this partnership. Now, I have not seen any evidence whatever that would support such a charge; I have seen no evidence that the defendants have engaged in anything of the kind; all of the circumstances go to the opposite conclusion; this business of winding up seems to have been done in the usual way, so far as I can gather, and that this inventory was honestly taken, and that it was just, I have no doubt; it seems to me that all the circumstances show it; I have not yet heard of any property that was left out of the inventory except this supposed good will; that omission appears on the face of the inventory; there was no concealment about it at all events. Then there was an estimate of value; singularly enough, the weight of the testimony here is that according to the usual mercantile way of ascertaining what this old lady and her two daughters ought to have had, a calculation upon the basis of 65 per cent. should be made, deducting 35 per cent. from the cost value; the weight of the testimony is that such method is usual among merchants; prominent merchants have come here and testified to that effect; there seems to be quite a unanimity of mercantile opinion and testimony to that effect; 35 per cent., then, should have been taken off from their cost value, and that, said one of the witnesses, is applicable to mercantile business generally, even where *staple articles* are dealt in. Such seems to be the idea, that from 30 to 35 per cent. must come off. Here they were not staple but fancy articles—articles whose value depended in great measure upon the fluctuations of fashion, and instead of deduct-

ing at the rate of 35 per cent.; they took off only 2 per cent.; that was liberal on the part of the defendants; they actually gave up 33 per cent., as I understand the testimony to begin with. That fact of itself would overbalance any calculation I have seen, or suggestion of what was claimed to have been lost to plaintiff in other directions. If an accounting were now ordered, and a readjustment, defendants would have a right to invoke the establishment and accepted rule of mercantile valuation of the goods; they would say, "Very well, take this stock at 65 per cent. instead of 98; we are content." I don't think the complainant here, or these ladies, would get anything like the amount of money they got on the accounting, but it is enough for me to say that this bill proceeds upon the grounds of actual fraud committed, and I see no evidence to support such a charge, and therefore the judgment must be for the defendants.

[*THE CITATION TO THE ATTORNEY TO BE
DISBARRED. ISSUED DEC. 7, 1894.*]

IN THE SUPREME COURT OF THE STATE
OF CALIFORNIA. IN BANK.

| | |
|----------------------|------------|
| In the Matter of | } 21, 188. |
| HORACE W. PHILBROOK, | |
| An Attorney at Law. | |

It has come to the attention of the Court that one Horace W. Philbrook, an attorney at law, authorized to practice in this

Court, did, upon the 30th day of November, A. D., 1894, file a certain brief in a certain cause then pending in this Court, numbered 15,857, and entitled Ira P. Rankin, Special Administrator of the estate of John Levinson, deceased, Plaintiff and Appellant, vs. William J. Newman and Benjamin Newman, Defendants and Respondents, in which said brief there are found matters which in the mind of the Court are of a scandalous and contemptuous character. The said scandalous and contemptuous matters are found upon the pages of said brief commencing at page 313 thereof, and extending consecutively down to and including a portion of page 379 thereof, and the whole tenor of said matter may be fairly illustrated by the following excerpt, taken from pages 377 and 378:

"It is not enough for Courts of Justice to be, in fact, pure. In addition to the fact, there must exist the fullest confidence in their purity. It is not enough for Judges to be, in fact, strong enough to resist temptation. They must not allow themselves to be tempted. Examine carefully and thoroughly the secret transaction of Sept. 6, 1890. It was without an extenuating circumstance. You have before you here the proof of what its contrivers and users think of Courts of Justice and of Judges. You behold their evil and most contemptuous confidence. They rely solely upon the corrupting force of their corrupt contrivance, the secret transaction of Sept. 6, 1890; and solely upon that reliance, they have been ever since Sept. 6, 1890, and still are as confident of a final judgment for the Newmans as if they already had it locked up at home. And is it not probable then, that many others think with them that the Courts may be corrupted, the judgments of Judges perverted, and that others, still more numerous, suspect it? But if this secret transaction of Sept. 6, 1890, is not declared illegal and void upon the rules and principles declared in *Egerton vs. Earl Brownlow*, then all to whom knowledge of the case shall come, will no longer merely suspect or even think that the Courts may be corrupted; they will know it; they may point to the decision here as full proof of it; for it will be established that such practices are permissible, and if permissible, they are sure to have effect."

By reason of the foregoing premises, it is therefore, ordered that he, the said Horace W. Philbrook, appear before the Court

on the 17th day of December, A. D., 1894, at 10 A. M. at the Court-room thereof, in the City and County of San Francisco. and at that time show cause why he, the said Philbrook, should not be removed from his office as an attorney at law, and debarred from further practicing before the courts of this State, for having violated his oath and duties as an attorney of this Court in filing the said brief.

It is further ordered that a certified copy of the foregoing order be forthwith served upon said Horace W. Philbrook by the Bailiff of the Court, and the return made thereof.

BEATTY, C. J.,
 FITZGERALD, J.,
 MCFARLAND, J.,
 DEHAVEN, J.,
 GAROUTTE, J.,
 VAN FLEET, J.

[*NEWS ARTICLE IN THE EVENING POST,*
DEC. 7, 1894.]

PHILBROOK'S FIX.

Disbarment Proceedings Have Been Instituted.

The Supreme Court Cites Him to Appear Before It.

It is Generally Believed that only a Most Abject Apology Will Save Him.

Attorney Horace W. Philbrook's attack upon the Supreme Court in general and Justice Harrison in particular has landed him in a peck of trouble.

This morning he was cited to appear and show cause why he should not be disbarred from practice. The order reads as follows :

“It has come to the attention of the Court that one Horace W. Philbrook, an attorney-at-law, authorized to practice in this Court, did, upon the 30th day of November, A. D., 1894, file a certain brief in a certain cause then pending in this Court, numbered 15,857, and entitled *Ira P. Rankin, Special Administrator of the estate of John Levinson, deceased, Plaintiff and Appellant, vs. William J. Newman and Benjamin Newman, Defendants and Respondents*, in which said brief there are found matters which in the mind of the Court are of a scandalous and contemptuous character. The said scandalous and contemptuous matters are found upon the pages of said brief commencing at page 313 thereof, and extending consecutively down to and including a portion of page 379 thereof, and the whole tenor of said matter may be fairly illustrated by the following excerpt taken from pages 377 and 378 :

“‘It is not enough for Courts of Justice to be, in fact pure. In addition to the fact, there must exist the fullest confidence in their purity. It is not enough for Judges to be in fact, strong enough to resist temptation. They must not allow themselves to be tempted. Examine carefully and thoroughly the secret transaction of Sept. 6, 1890. It was without an extenuating circumstance. You have before you here the proof of what its contrivers and users think of Courts of Justice and of Judges. You behold their evil and most contemptuous confidence. They rely solely upon the corrupting force of their corrupt contrivance, the secret transaction of Sept. 6, 1890 ; and solely upon that reliance, they have been ever since Sept. 6, 1890, and still are as confident of a final judgment for the Newmans as if they already had it locked up at home. And is it not probable then, that many others think with them that the Courts may be corrupted, the judgment of Judges perverted, and that others, still more numerous, suspect it? But if this secret transaction of Sept. 6, 1890, is not declared illegal and void upon the rules and principles declared in *Egerton vs. Earl Brownlow*, then all to whom knowledge of the case shall come, will no longer merely suspect or even think that the Courts may be corrupted; they will know it; they may point to the decision here as full proof of it ; for it will be established that such practices are permissible, and if permissible, they are sure to have effect.’

“ By reason of the foregoing premises, it is therefore, ordered that he, the said Horace W. Philbrook, appear before the Court on the 17th day of December, A. D., 1894, at 10 A. M., at the court-room thereof, in the City and County of San Francisco, and at that time show cause why he, the said Philbrook, should not be removed from his office as an attorney at law, and debarred from further practicing before the Courts of this State for having violated his oath and duties as an attorney of this Court in filing the said brief.

“ It is further ordered that a certified copy of the foregoing order be forthwith served upon said Horace W. Philbrook by the Bailiff of the Court, and the return made thereof.”

The order is signed by all the Justices except Harrison. The general belief among attorneys is that only the most abject apology will save Philbrook, and it is doubtful if that will satisfy the Court.

[EDITORIAL IN THE EVENING POST, DEC. 12, 1894.]

THE SUPREME COURT.

The people of the State of California have not in their power of giving a more honorable or dignified office than that of Justice of the Supreme Court. Those who have aspired to that high place have been men of blameless lives, probity, great legal talent, learning and ability ; the ablest lawyers of the State have been content to round out an upright life at the bar with a term on the Supreme bench. The people, knowing the character of men whom they have chosen for that elevated office, have

rightly regarded the Supreme Court as the body that stood between themselves and oppression, the power that, free from all improper influences, decided wisely, justly and righteously.

So deep a respect have we been accustomed to feel for this dignified body that the filing of a brief charging improper motives to one of the Justices, and threatening the Court by inuendo and insinuation, impels disapprobation. We would not rob the humblest man of his right to a hearing, and it has been to the honor of our Supreme Courts that the poorest and the meanest have had their complaints as closely scrutinized as the appeals of the richest and strongest. But never before in the history of the Supreme Court of California has a lawyer had the vindictive audacity to come forward and cast aspersions on that body to which the people have been accustomed to look with respect.

In Court, when attorneys are battling for their clients' lives, it sometimes happens that in the heat of anger, words are spoken that are outside of courtesy; but it is the rule that the hasty language is withdrawn and the speaker is purged of his contempt. There is no such excuse for Mr. Philbrook, apparently, and yet we hope that the Supreme Court will allow him to withdraw his insolent and disrespectful brief and give him an opportunity to apologize.

The Supreme Court is too firmly planted in the esteem of the people; the grand men who adorn it are too much respected by the public to be injured by the brief referred to. Yet it is unfortunate that a lawyer could so far forget the dignity of his calling, could so easily lose sight of the reverence he owes the idea of the office of Supreme Justice as to use the language Mr. Philbrook did. The dignity of our Courts must be upheld, and when the time comes that notoriety-hunting men seek to defame them, the time has come when law-abiding citizens must rally to their support.

[*EDITORIAL IN THE RECORD-UNION,*
DEC. 13, 1894.]

AN OUTRAGEOUS ASSAULT.

THE PHILBROOK CASE AND THE SUPREME COURT.

Probably not in the history of the American judicial system has there been made such a causeless, unprovoked and unmanly assault upon the courts of the people by a lawyer as that recently witnessed in San Francisco.

A member of the bar has appeared before the Supreme Court of the State and filed a brief in which he assumes this threatening attitude toward the Court, and expresses its meaning in unmistakable language: "I, as an officer of this Court, say for my clients to this Court that if you dare to decide against my clients' position in this case it will be because you have been bribed to do so." He then goes on in this remarkable document to fortify the threat by an argument to show that the deduction of bribery and corruption will be inevitable if the decision is against him.

The Court has cited Attorney Philbrook to appear before it on the 17th inst., and show cause why he should not be debarred from practice in all courts in the State. Disbarment will be mild punishment for so grievous an offense. Under the circumstances it is difficult to see how the Court can do otherwise than strip the robes of "Counselor" from the unworthy shoulders of its officer. It ought beside to jug him in the common jail, and let him learn wisdom while he cools his heels in prison.

So monstrous is the Philbrook contempt case, so furious and vicious an assault upon the liberties of the people is it, that a brief statement of facts before further considering the case is essential.

It will be sufficient to say that a mercantile firm some years ago suffered the loss of one of its members by death. The administrator of the estate, under the authority reposed in him and with the subsequent sanction of courts before which the case came, sold to the surviving partners the interest of the deceased

in the firm. The contract of sale or settlement was drawn by the administrator's attorney, who is now a member of the Supreme bench, but was then a member of a law firm in San Francisco.

This sale being contested in one way and another by certain parties in interest, the Superior Court held that the good will of the firm was not a valuable thing for which the surviving members of the mercantile firm ought to pay. For this Philbrook bitterly assails the Superior Court in this same offensive brief. The case coming into the Supreme Court, the attorney files a brief in opposition of those opposing him and contending for the integrity of the sale. Replying to an expression in the brief of the other side that the contract of settlement is "in the handwriting of Judge Harrison," Philbrook opens the vials of his wrath upon the Supreme bench, and in so many words threatens, "If you decide against me it will be because Mr. Justice Harrison is one of your colleagues, though that Justice does not sit in the case." This, Philbrook declares, will be evidence of corruption and bribery of the baldest kind. He uses this charge as a threat to the Court, warning it that it dare not decide against him.

Under such circumstances the Court is placed in this position; if it holds with Philbrook, of being laid open to the exultation that he forced the Court so to adjudge; if it holds against him it will be subject to his libel that it is corrupted by the membership of Justice Harrison. Fortunately for the Court though, there have been so many attempts in San Francisco to stimulate lawlessness and disrespect for the laws and the people's tribunals, it can rise above all these considerations and pass upon the issues in the case indifferent to them, and as the law and common justice demand.

The passages in the argument of Attorney Philbrook, for which the Supreme Court has cited him for contempt, are as follows:

"It is not enough for Courts of Justice to be in fact pure. In addition to the fact, there must exist the fullest confidence in their purity. It is not enough for Judges to be in fact strong enough to resist temptation. They must not allow themselves to be tempted. Examine carefully and thor-

oughly the secret transaction of September 6, 1890. It is without an extenuating circumstance. You have before you here the proof of what its contrivers and users think of courts of justice and of judges. You behold their evil and most contemptuous confidence.

"They rely solely upon the corrupting force of their corrupt contrivance, the secret transaction of September 6, 1890, and solely upon that reliance they have been ever since September 6, 1890, and still are, as confident of a final judgment for the Newmans as if they already had it locked up at home. And is it not probable then that many others think with them that the courts may be corrupted, the judgment of judges perverted, and that others still more numerous suspect it?

"But if this secret transaction of September 6, 1890, is not declared illegal and void upon the rules and principles declared in *Egerton vs. Earl Brownlow*, then all to whom knowledge of the case shall come will no longer suspect or merely think that the courts may be corrupted; they will know it; they may point to the decision here as full proof of it, for it will be established that such practices are permissible; and if permissible, they are sure to have effect."

But there are other passages in this remarkable brief equally as insulting, contemptuous and indecent. Throughout the brief bristles with quotations from Shakespeare, Cicero and the poets, and with satirical, contemptuous and vulgar sneers framed as threats, and clearly intended to cow and browbeat the Court. Some of these passages we quote, making no apology for the length, since the case is of such surpassing importance that it justifies full exploitation.

"And let this, too, be borne in mind by every Justice who takes part in the decision. You were not, any more than I, either directly or indirectly, a party to the secret transaction of September 6, 1890. *

* * "It will never be in any, even the slightest degree, your act, your child, nor will you ever, in even the slightest degree, be responsible for it, unless you adopt it as your own. Though it is a lure, prepared to be held out to you as a lure, it touches you not, unless you accept it. * * *

"Again, suppose that Ralph C. Harrison, Milton S. Eisner, William J. Newman, Benjamin Newman and S. W. Raveley had deposited the means with reliable stakeholders—with William J. Newman, Benjamin Newman, Reinstein

& Eisner and E. R. Taylor as stakeholders—to be devoted to bestowing some great gratification upon every Justice of this Court who should adjudge this case in favor of the Newmans, and should announce the fact in the transcript on appeal, would you endure such a thing? Could you endure such a thing? * * *

“A bribe is still a bribe however it is cunningly sugar-coated. For, would it not be a great gratification to the mind of every Justice who sits in this case to have such a judgment pronounced as would declare Ralph C. Harrison, Associate Justice of the same court with himself, his daily close associate in the discharge of a public trust of the most sacred character, his intimate personal friend, guiltless of fraud?

“In the court below the secret transaction of September 6, 1890, was given its full intended effect, and the judgment there might well have been expected, as doubtless it was expected, to be final. Rarely, indeed, could the defenseless and the oppressed be expected to have the courage or the means, or to find an advocate, to appeal from such a judgment in such a case. If now, in the Supreme Court of the State of California, the secret transaction of September 6, 1890, is not to be pronounced illegal and void, upon the principles of law and justice, declared and enforced in *Egerton vs. Earl Brownlow*, *supra*, if it is not to be wiped out utterly root and branch, and with such emphasis as to remove with it its exhalation of poison, in some such manner as to be a warning against like practice in future, and to the defenceless and oppressed a protection in the future against wicked and impudent audacity and insolence, and it must not be expected that the contrivers and users of the secret transaction of September 6, 1890, have got the start of the majestic world, and are to bear the palm alone. Others will elbow them in their own field. * * *

“The same bribe is also expressed by them [the opposing side in its brief] at folio 616, in its outcry: ‘It is in Judge Harrison’s hand writing.’ The same bribe is also thrust forward in the witness clauses of the secret papers, ‘in the presence of Ralph C. Harrison.’ The cunning bribe is of such a sort that it is to remain a bribe even if Ralph C. Harrison should retire from his high office.” * * *

The Philbrook contempt case now before the Supreme Court of this State strikes at the root of all our liberties, since there is no freedom with us except under law. The true government derives its powers from the consent of the governed. We have

established such government. It is divided in its activity and ministrations to happiness, and assurance of peace and security into three co-ordinate branches—the legislative, the judicial, and executive. The office of the one is to declare the will of the people; of the other, to interpret the laws and hold the representative body within the lines of conferred powers, and of the third, to see that the mandate of the laws are faithfully observed.

Now there attaches to the judicial arm through tradition, of necessity and by virtue of its functions, certain powers and rights; namely, to maintain its dignity, because it is the final tribunal of the people, and to discipline those licensed to plead at its bar. There is interwoven into the very texture of the judicial system the assurance that the courts shall be free from assault, threat or cow; that they shall be treated with respect, not corruptly approached, or be subject to duress or compulsion—these things, not because of the men who have been invested with the judicial office, but because the office is the creation of the people, and because being the highest function a people through their appointed agencies can assume, it must be free, untrammelled, met with respect, treated with decency, and its decrees bowed to until reversed.

Doubtless courts, being human institutions, are not perfect, but they are, as a rule, the highest development of the political civilization of a people, and therefore the people are the very last who can suffer them to be treated with contumely. The ethics of the bar demand that its members shall, as officers of the Court, maintain its dignity and set the example of respect for it which is demanded of all.

The lawyer, therefore, who makes such assault by inuendo, such threat direct, such contemptuous address as this Attorney Philbrook indulges in, abuses his privilege, soils the robes of his profession, offends the people whose tribunal he insults, and, by these contributions to the lawless spirit, strikes a blow at order, law and liberty, and should be disbarred with promptness and severity.

The laws express the average knowledge and moral sense of the communities which enact them; respect for the tribunals established to interpret the laws and adjudge between men,

stands for the full measure of our loyalty to free institutions. If, therefore, the spirit of unrestraint, lawlessness and fret against the regulations of order and security, have so grown that this offense of Philbrook's can be passed unpunished, we have neared the latter days of republican institutions.

The laws and their administration have an educational influence upon the minds of men. If they are so feeble that the tribunals of a land can command respect neither for law nor themselves then the hour of even our partial democracy has struck.

But we have faith in the courts. Fallable though they be, as are their creators, they stand for the highest, best, noblest and safest bulwarks of freedom in action, speech and print, and in security of life and property, and the right to seek happiness. They guarantee us in the exercise of our constitutional sovereignty; they represent prudence, justice, fortitude and order; they stand exponents of the conscience of the communities that constitute the nation; they actualize every virtue the State and the nation have as political bodies; they are the shield and safeguard against the assault of the vicious, and of trespassers upon human right; against the encroachments of arrogance and of bloated pretension upon the rights of the law abiding, the weak and the timid. If the courts are not to be respected, if this viciously contemptuous performance of an arrogant and browbeating San Francisco lawyer stirs in the breasts of our people no indignation, we have reached a deplorable stage. But we are as confident that every decent citizen feels this attack by threat upon the Supreme Court to be a personal assault, an offense against his own tribunal and therefore against himself, as we are convinced that the Court has the courage to, and will punish Philbrook as he deserves, and thus vindicate the high warrant of office issued to it by the people.

[*RESOLUTION OF THE BAR ASSOCIATION OF SAN FRANCISCO, ADOPTED DEC. 14, 1894.*]

RESOLVED, That the first and second vice-presidents of this Association, in conjunction with Judge A. L. Rhodes and four others to be named by the Chair (making a committee of seven), appear before the Supreme Court of this State on Monday the 17th day of December, 1894, at the hearing in the Matter of Horace W. Philbrook, for the purpose of seeing that said matter is properly presented.

[*EDITORIAL IN THE RECORD-UNION, DEC. 20, 1894.*]

THE PRESS AND THE PHILBROOK CASE.

We have in mind a remarkable instance of the perversity of certain of the press in San Francisco in misrepresenting the United States Court in the Debs case and in catering to a disorderly and revolutionary spirit. Another instance of this dangerous drift is found in the Philbrook contempt case now before the Supreme Court of this State.

Certain of the San Francisco press not only misunderstand that case and misrepresent it to the people, but they do so willfully, though every facility is open to them to ascertain the exact facts. Thus, one of the daily papers of the metropolis, declares that the only thing the Supreme Court can do is to permit Mr. Philbrook full opportunity to prove his charges against Mr. Justice Harrison. Another sheet shouts that as Philbrook has charged fraud upon Mr. Harrison while he was a practicing attorney and before he came to the bench, that the thing to do is to come forward and disprove it. Still another declares

that the Bar Association is very quick to prosecute one of its members who offends a court, but takes no action in the case of others who are dishonest. We are probably to conclude, therefore, that the Court offenders are to be allowed to offend and go free of discipline.

Whoever heard the full statement of Mr. Philbrook as made to the Court on Monday; whoever listened to the reading of his elaborate written answer in which he sets up all he has to plead in his own behalf; whoever, with the honest desire to get at the facts, listened to his very long, deliberate and explicit statement to the Court, occupying the larger portion of a day, must be prepared to say that such of the San Francisco press as have commented unfavorably to the Court upon the case have outrageously, dangerously and willfully misrepresented the proceedings. These papers claim for Philbrook things he does not claim for himself; they suggest things and comment upon them that are not in the case, never were and never will be. Their comments all go toward conviction of the public mind that Philbrook is being persecuted; that someone is trying to whitewash somebody else; that the Supreme Court is denying a human right and that the offending attorney is prevented from proving his case.

The truth is, that not before in the history of the Supreme Court of this State has such full and unrestrained liberty been granted to any lawyer as has been conceded to Mr. Philbrook to make his case. Not a single obstacle, he admits, has been thrown in his way, nor has, he says, a moment of time been begrudged him. His ¹²persecutors solicited the Court to give him all time and all process to present his case, and the order was made affirming the request. Philbrook himself has not uttered one word of complaint that he has been unable to set out his defense. On the contrary, he presented in print every particle of testimony taken or that can be taken in the case out of which his own arises, and there was not entered to it a single objection. In short the perfect freedom accorded him in the Court was phenomenal and unprecedented, though he abused the privilege accorded, wearied the patience of the most patient, and introduced matters as foreign to the case as the north star to our planet.

The story of the Philbrook case may be simply told. A mercantile firm agreed in writing that on the death of either partner the surviving partners might succeed to the business of the firm, after inventory taken according to usual mercantile methods. One of them died, leaving a mother and sisters as heirs. After a time the executor of the will, under advise of his attorney, who has since been elevated to the Supreme bench, by the votes of the people, sold to the surviving partners the interest of the decedent according to the terms of the partnership agreement on an inventory taken, in which not 35 per cent., as is customary, was taken off the cost price of broken stock, but only 2 per cent.

The heirs were not consulted as to the sale. It was consummated by the executor and the buyers, and the executor's attorney, Mr. Harrison, drew the papers and they were executed in the presence of the executor, the buyers and their attorneys and the executor's attorneys. The heirs, the mother and sisters, through their attorney, set up the claim that the good will of the business should be included in any valuation. The attorney of the executor had distinctly told the attorney for the heirs that there was no good will to sell, as the partnership agreement precluded it and was binding, and he should advise the executor to carry it out, as it was the law, which he did. For some time the sale was not known to the heirs, and this is charged as evidence of secrecy and fraud. They were not notified to be present at the sale, and this is charged as part of a conspiracy to defraud. The agreement of sale was written by the executor's attorney, now a Justice, and this, it is charged, is evidence of a conspiracy to influence the minds of any Judges before whom any litigation might come, because the attorney expected to be elected to the bench.

It was admitted that the only issue raised between the heirs and the executor prior to the sale was as to the good will. The heirs brought their action to set aside the sale, we believe, and the whole matter came before Judge Wallace of the Superior Court, and was elaborately tried and all the facts brought out, even to the social relations of the executor and the buyer and the nomination and election of Harrison, and everything else that the heirs wished. The Court found, as a matter of fact, that there was no fraud, no collusion, no scintilla of evidence

suggesting fraud or conspiracy, no forecast of possible influence upon Judges' minds, and no good will to sell, and that the executor had acted within the law and the bounds of his duty.

From this judgment the case went to the Supreme Court upon appeal. It also went up in another form on a separate appeal not material to this consideration. When the heirs' attorney, Mr. Philbrook, came to file his brief in the Supreme Court, he went to the extent of hundreds of pages in the exploitation of the whole case, charging on the testimony certified up that there was fraud; that Justice Harrison was at the bottom of it, and that with cunning he had foreseen his election, and that his personality in the case would have an effect upon the minds of his associates in the Court and prevent them from doing justice in the case, because they would want to protect the reputation of a member of the bench; and he charged that in fact it would so influence and have an effect upon the minds of the members of the Court, which is to say that the Supreme Court is open to corrupting influence.

But the attorney went beyond this and told the Supreme Court in so many words: If you decide against me it will be taken that you ratify and make permissible the corruption I charge against Mr. Harrison. If you decide against me it will be because you are yourselves corrupt.

"But if this secret transaction of September 6, 1890, is not declared illegal and void upon the rules and principles declared in *Egerton vs. Earl Brownlow*, then all to whom knowledge of the case shall come will no longer merely suspect or even think that the Courts may be corrupted. They will know it. They may point to the decision here as full proof of it, for it will be established that such practices are permissible, and, if permissible, they are sure to have effect."

For this and the whole insulting line of charges the Court cited him, as an officer of its own, to show cause why he should not be disciplined—why he should not be disbarred for violation of his oath as an attorney. Generally, neither press nor people take concern when a court castigates one of its own attorneys. If the courts are not to keep these gentlemen straight no one else can. But here we have the press, in part, rushing to the

defense of Philbrook simply and solely because he has laid a charge of corruption which has failed of proof, and has threatened a court if it does not decide as he wishes.

His defense is that what he has set out he believes to be true, as to corruption; that, as to the threat, he meant, "people would say the Court was corrupt if the Court rules against him"; that he used the language likewise in a *Pickwickian* sense; that he has entire confidence in the Court and knows it is fearless and not corrupt, else he had not appealed; that the right of free speech guarantees him liberty to say what he pleases in his brief in defense of the rights of his clients; that it is they who speak and not him.

To which his fellow members of the San Francisco bar, by their own committee, in effect reply: "The language of the brief is grossly unprofessional and contemptuous, and if the respondent does not know it, he is not fit to practice; if he does know it, then he ought to be punished by disbarment; the alleged facts he sets up are not proven, and the Court below so found, and an appeal is pending which is not before the Supreme Court in this proceeding, but simply the question is the threat in the brief in violation of the oath of the attorney, and is it dangerous and defiant?"

And this is the case in brief which is so misrepresented in the city of its origin. It is this case that has brought congratulations of Philbrook from the whole job-lot of people with whom it is sufficient to lay a charge to have its truth assumed, if only it is against a court of the land. Perhaps, however, the most humiliating outside thing in the whole matter is the fact that a newspaper claiming to be representative of the metropolis should in its criticism of the case so far go wrong as to declare that "all there is for the Court to do is to give Philbrook full opportunity to prove his case"; we assume it is meant that he should be given liberty to prove that there was fraud in the sale of the partnership interest, a matter that is not before the Court, has already been tried, is on appeal, and has not yet been examined or decided by the Appellate Court—but all the testimony, all the evidence he wished to offer he was permitted to introduce despite its irrelevancy and that such a proceeding is phenomenal in an Appellate Court.

If the Courts of the land are to be the constant target of assault by ignorance, cranky prejudice and injustice ; if they are to be misrepresented constantly before the people, reports of their proceedings perverted and their motives impugned without supporting proofs, the day of the downfall of the judiciary is not far off, and with its overthrow will go the liberties of the people. The courts are to be criticised openly, decently, fearlessly ; but they are the tribunals of the people, and their decrees must be respected, their right to be free from intimidation, threat and assault maintained, or else they must be abandoned, and when that is done, with them will go free government, giving place to either anarchy or autocracy.

[*EDITORIAL IN THE EVENING POST,*
DEC. 20, 1894.]

The Supreme Court of California is in a somewhat embarrassing position. In the matter of Philbrook's contempt, it owes a duty to itself and to the people who believe that the dignity of the law, whether it is represented by a Justice of the Peace or a Justice of the Supreme Bench should be upheld. On the other hand, it feels that if it inflicted the proper punishment on the erring attorney he would be deprived of the opportunity of earning his livelihood. Mr. Philbrook's proper course would have been an apology. He did not see fit to make it. Now the Supreme Court is in a dilemma ; if it does its duty it will disbar the offender and leave him without a profession ; if it fails, it will encourage men to go before it with threats and extort decisions with wordy bludgeons.

[*THE JUDGMENT OF DISBARMENT, JAN. 5, 1895.*]

IN BANK.

In the Matter of
HORACE W. PHILBROOK. } No. 21, 188.

BY THE COURT.

Horace W. Philbrook, a licensed attorney, having filed in this Court a certain brief in which he appeared to have violated his duty as an attorney, was cited to appear before the Court on the seventeenth day of December, A. D., 1894, at 10 o'clock A. M., to show cause why he should not be removed from his office as an attorney at law, and debarred from further practicing law before the Courts of this State. The citation was served on him ten days previous to said December 17th. On said day he appeared, and as he did not ask any continuance, but announced himself ready, the matter was proceeded with. A committee from the Bar Association of San Francisco requested to be allowed to appear "for the purpose of seeing that said matter is properly presented; and their request was granted. The Respondent, Philbrook, filed a written answer to the citation, and he was allowed to make an oral argument in his own defense, without restriction of time, his argument occupying the greater part of two days. The Committee of the Bar Association argued that he should be disbarred. In the citation, attention was called to certain pages of the brief which contained the objectionable matter; and a part of it was quoted. The respondent did not offer any apology or make any excuse; but in his written answer, and in his oral argument he boldly contended that his brief was unobjectionable and contained nothing which he had not the right to put there. His argument was for the most part, a reiteration of the assertions and language of the brief.

The brief in question was filed by said Philbrook as Attorney for the appellants in a certain action now pending here on appeal,

No. 15,857, entitled, "Rankin, special administrator of the estate of John Levinson, deceased, plaintiff and appellant, vs. Wm. J. Newman and Benjamin Newman, defendants and respondents." Levinson, deceased, had, in his lifetime, been a co-partner with the said Newmans, under the firm name of Newman & Levinson; and said action grew out of a difference about the settlement of the business and affairs of the partnership, and was decided by the trial Court in favor of the Newmans. A motion for a new trial had been made by Philbrook's client in the trial Court, and had been there denied; and the appeal was taken from the order denying the motion for a new trial. This appeal has not yet been argued or submitted in this Court, and its merits are not before us; although the transcript in the case, and also the transcripts in two other appeals between the same parties, in which the Newmans were also successful in the trial Court, are made parts of the said Philbrook's answer in this present proceeding.

The objectionable parts of the said brief for which respondent, Philbrook, was cited as aforesaid, consist mainly: 1st. Of offensive, scandalous and contemptuous language concerning Hon. Ralph C. Harrison, one of the Justices of this Court; and 2d. Of language contemptuous of all the other Justices of the Court, in that it broadly intimates that they may be improperly influenced in deciding said appeal, and boldly threatens them with evil consequences to themselves if they should decide the appeal adversely to the appellant. It also contains language highly reprehensible concerning the learned Judge of the Superior Court who heard and determined said action at *nisi prius*, and his answer contains such language concerning another learned judge of the Superior Court who decided the other cases mentioned in said Philbrook's answer.

During the year, A. D., 1890, the Hon. Ralph C. Harrison, now a Justice of this Court, was, and for many years prior thereto had been, a practising lawyer at the San Francisco bar; and during nearly all of that year he was the attorney of one Raveley, executor of said John Levinson, deceased, above mentioned. On the 6th day of September of that year (1890) a settlement was made by and between the said executor, Raveley, and the surviving partners, the said Newmans, at which two

certain paper writings were executed, which were in the handwriting of Justice Harrison, and signed by him as a witness. There were articles of co-partnership of the said firm of Newman & Levinson, existing and in force at the time of the death of Levinson, which provided, or at least purported to provide, for the disposition of the interest in the firm property and business of either partner upon his death. At that time, and prior thereto, the respondent here, Philbrook, was the attorney for certain legatees of said Levinson, and it appears that Philbrook thought that the estate was entitled to a share of the "good will" of the said firm, while Justice Harrison was of the opinion that under the said articles of co-partnership the estate of Levinson had no interest in the good will, but was entitled only to its share of the partnership property, to be ascertained as provided in said articles. It is clear that this was the only point of difference existing at the time of said settlement. It was a pure question of law, as to which it was the duty of Justice Harrison to advise his client—the executor—according to his best judgment.

But it happened that a few weeks before the said 6th of September, Justice Harrison had been nominated by one of the two leading and nearly equally powerful political parties of the State as a candidate for the office of Associate Justice of the Supreme Court; and upon this circumstance respondent Philbrook has built up in his imagination a gigantic conspiracy, which, he contends, gives him the right under the claim of free argument to assail Justice Harrison while a member of this Court by every offensive epithet which his somewhat wide vocabulary supplies, and to ascribe to him the vilest motives and conduct. He assumes and asserts that Justice Harrison, his client Raveley, the Newmans, and their attorneys, Reinstein and Eisner, entered into a conspiracy to do a wrong, which conspiracy was founded upon the consideration that the former had been nominated as a candidate for Justice of this Court; that he was practically sure of election, and that if he should draw up said paper writings and witness them, any Superior Judge before whom any litigation concerning the matter might come, would be deterred from doing right by the knowledge that one of the conspirators was a Justice of the Supreme Court, and that upon appeal the other

Justices of this Court, would be swerved from their duty because one of the alleged conspirators would be associated with them on the bench. And it is contended that on account of this imaginary state of facts founded on no evidence, and without any probable cause, respondent has free rein to indulge in whatever insulting and contemptuous language his fancy may conjure up concerning a Justice of this Court.

It is impracticable to here reproduce any considerable amount of the language used in the brief; but a few specimens will be quoted. Having characterized Justice Harrison as one of the chief conspirators, he denounces what he calls the "secret transaction of September 6th," as "this most impudent and unspeakably wicked scheme." Having said "There they all were, Ralph C. Harrison, Milton S. Eisner, William J. Newman, Benjamin Newman and Executor Raveley, secretly assembled solely by reason of the fact that Ralph C. Harrison was about to become a Justice of the Supreme Court," etc., he asks: "Could a more villainous deed than that be conceived?" He speaks of Justice Harrison and the others as "corrupt, depraved and wicked persons," and of the former as "*particeps criminis*." And again he says: "It was done criminally, and it was necessary to the scheme that Ralph C. Harrison should become a Justice of the Supreme Court." Again, he says that "every man present at that secret transaction of Saturday, September 6, 1890, knew what they were all about; knew that he was a participant in one of the foulest and blackest of crimes; that he was helping plant a dagger for the breast of Justice." Again, speaking of that transaction, he asks: "Can it be that we shall find in it a clew to the secret of supreme success, the very crown of success in the practice of the law?" And again: "Why expect men to wear themselves out with the intemperate study of law books, as they have hitherto been written, when there is open the easier, surer and more profitable field of low cunning by which helpless women and fatherless children may be betrayed, robbed and made outlaws by one single stroke?" Again: he asks how far matters have gone "when so vile a scheme is contrived to pervert the Courts, when it raises its head openly, plants its vile body openly in the very temple of justice, wears no other disguise than unblushing audacity and brazen impudence."

The foregoing quotations give a fair idea of the character of the brief, and of the temper and *animus* which inspired it, and in all that respondent has presented in his answer, in his argument, and in the several transcripts which he made parts of his answer, he has been unable to show any ground, any decent pretext for the outrageous verbal assaults which he has made upon a member of this Court. Nothing appears in connection with the transaction so often alluded to in the brief which places Justice Harrison in any other light than that of an upright and honorable lawyer, faithfully attending to the interests of his client, and advising him according to his best judgment. He also gave some testimony at the trial ; but section 282 C. C. P. enjoins upon an attorney "to abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which he is charged." The parts of the brief to which we have alluded are, therefore, contemptuous and unbearable, and entirely unwarranted under any claim of free speech. We appreciate the right of counsel to fully argue their cases, to comment on witnesses whoever they may be, and to present views and press arguments within any reasonable bounds of propriety. There need be no difficulty in this Court on that subject. It would be hard, no doubt, to designate a line that would in all cases properly divide free speech from license. But there is no trouble in the case at bar on that score, for the conduct of the respondent is, beyond doubt, entirely on the side of unbridled license. Of course, the fact that an attorney has been elected a Justice of this Court does not shield him from any fair criticism of his conduct when an attorney ; but when there is such unwarrantable language as that used by respondent, it is manifest that it was used *because* the person assailed was a Justice of this Court, and with intent to commit a contempt of this Court. As respondent has, in the same connection, assailed not only all the members of this Court and the two Superior Judges above referred to, but also certain reputable lawyers who were at one time associated with him in the litigation, and a special administrator who was appointed at his own instance and out of his own office, charity might possibly suggest that he is the victim of abnormal suspicion and distrust. But no such

defense is made ; and, moreover, his brief and argument show a bright intellect and a clear mind. His conduct, therefore, exhibits only a sheer intent to be maliciously contemptuous.

With respect to the other members of the Court the language of the brief is not only generally contemptuous, but contains a direct attempt to influence them by threats of injury unless they shall adopt his views of the case. He says in his brief: "And let this be borne in mind by every Justice who takes part in the decision: You were not, any more than I, either directly or indirectly a party to the secret transaction of September 6, 1890, 'and we that have free souls, it touches us not.' It will never be in any, even the slightest degree your act, your child, nor will you in even the slightest degree be responsible for it, *unless you adopt it as your own.* Though it is a lure prepared to be held out to you as a lure, it touches you not *unless you accept it.*" And again, having said that it is not enough for courts to be pure, but that there must be "the fullest confidence in their purity," he says: "But if this secret transaction of September 6, 1890, is not declared illegal and void upon the rules and principles declared in *Edgerton vs. Earl Brownlow*, then *all to whom knowledge* of the case may come will no longer merely *suspect* or even think that the courts may be corrupted, *they will know it*; they may point *to the decision here as full proof* of it; for it will be established that such practices are permissible, and if permissible they are sure to have their effect." This is a palpable attempt to influence a decision of this Court by base appeals to the supposed timidity of its Justices, and made, too, by an officer of the Court. It is intolerable. It cannot be suffered by any occupant of the bench who has a just sense of his duty to the people to preserve the due dignity of their courts and the free course of justice. An attempt to influence a Judge through fear of physical injury is no graver offense than such an attempt against his reputation. A high-spirited man might have perfect physical courage and yet might possibly, despite all his efforts against it, be to some extent insensibly affected by dread of the loss of his reputation and good name. Neither attempt can be for a moment countenanced without a manifest injury to the cause of justice. When people come into courts as litigants they have the right to expect the best judgments of their Judges, un-

influenced except by legitimate arguments made openly before them by counsel. They must expect those errors which will sometimes inevitably be committed by minds which are not infallible, but they should be able to feel sure that the impartiality of the Court will not be disturbed by any influence or fear or favor. And clearly nothing *tends* more to disturb that impartiality than a menace that the decision of a cause a certain way will destroy or greatly injure the good name of the Judge who shall make it. And when the punishment of such an offense is clearly within the jurisdiction of the Court, as in the case of one of its own officers, it must impose the penalty or neglect its imperative duty.

We exceedingly regret the necessity of this proceeding. It would have been much more agreeable for us to have devoted the time given to its hearing to other business. But to have overlooked it would have been to violate our duty, invite future disrespect and indignities, and establish a precedent which would have embarrassed the Court if offenses of a similar character should be called to its attention in the future. It may not be out of place to say that we have been lenient to the respondent for past offenses of a character similar to the one now before us, though not so flagrant; and that his attention has heretofore been directly called to his disregard of his duties as an attorney in this respect. In a petition for re-hearing he used disrespectful language towards a Commissioner of the Court who had prepared the opinion in the case, for which, perhaps, he should have been called to account at the time; and more recently we were compelled to strike out his brief in another case for disrespectful language. And even now we regret that we cannot see some escape from the necessity of imposing the penalty which seems to be imperatively demanded.

Our conclusion is that by filing said brief the respondent, Philbrook, has violated his duty as an attorney "to maintain the respect due to the courts of justice and judicial officers," and "to abstain from offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged," as declared in section 282 of the Code of Civil Procedure; and that for such reason he should be suspended from his office of attorney-at-law.

It is ordered and adjudged that the said respondent, Horace W. Philbrook, be, and he hereby is, suspended from his office as attorney and counselor-at-law, and prohibited from practicing as an attorney and counselor-at-law in any and all of the courts of this State for the period of three (3) years from this date, and thereafter until the further order of this Court removing such suspension.

FITZGERALD, J.
 McFARLAND, J.
 GAROUTTE, J.
 VAN FLEET, J.
 DE HAVEN, J.

[THE JUDGMENT OF DISBARMENT. CONCUR-
 RENCE OF BEATTY, C. J., JAN. 10, 1895.]

IN BANK.

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| In the Matter | } | No. 21, 188. |
| of | | |
| HORACE W. PHILBROOK. | | |

My views of this case differ in some particulars from those of my associates.

It was not because of Mr. Philbrook's assault upon a member of this Court—gross and unjustifiable as I deemed it to be—that I joined in the order citing him to show cause. So far as that part of his offense was concerned I should have waited until the final determination of the appeal in Rankin vs. Newman, before deciding what, if any, action it was deemed necessary or proper to take.

But, as is clearly shown in the opinion of the Court, Mr. Philbrook did not confine himself to an assault upon Justice Harrison

in his character of attorney for Levinson's executor, and as advisor and participant in the settlement of the executor with the surviving partners. He went much further; he distinctly threatened the other members of the Court with public infamy and disgrace if they did not decide the cause of Rankin vs. Newman in his favor. This he did, not only in the express terms of that part of his brief set forth in the citation, but indirectly and by every sort of implication through page after page of that portion of his brief to which his attention was directed by the references to said pages.

In his long and carefully prepared answer in writing, Mr. Philbrook makes no retraction or qualification of his objectionable language, but, on the contrary, distinctly re-avows everything he has said.

He claims—and I fully concede the claim—that if a justice of this Court had been a party or attorney, or witness, or in any other manner so connected with a cause which is on appeal here as justly to subject him to criticism; counsel charged with the presentation of such cause must be allowed the same freedom of criticism as in the case of any other person. But the logic of this proposition is that the fact that such party or witness is a member of this Court is wholly irrelevant; it has nothing to do with the case. Mr. Philbrook, however, does not hold himself bound by the logic of his proposition. He does not criticise Justice Harrison's conduct as attorney for Levinson's executor the same as if he were not a member of this Court, but apparently *because* he is a member of the Court he assails him with the bitterest invective, for the purpose of giving point and force to the proposition to which his whole argument tends, that we cannot affirm the order of the Superior Court without making ourselves participants of the fraud which he charges, and thereby giving all men reason to know that the courts of the country are corrupt.

In this consists the offense of which, in my opinion, the Court was compelled to take cognizance on its own motion—a step to which, I may say, we resorted with great reluctance. The law which in such cases makes us the judges of offenses against the Court places us in an extremely delicate and invidious position, but it leaves us no alternative except to allow the Court and the people of the State, in whose name and by whose authority it

acts, to be insulted with impunity, or to exercise the authority conferred by law for the purpose of compelling attorneys to "maintain the respect due to courts of justice and judicial officers."

If an attorney were to approach a court or a judge with the offer of a bribe to decide a cause in his favor, or if he were to menace a judge with personal violence or pecuniary loss if he decided against him, it cannot be doubted that all men would concede the propriety of depriving him of his privileges as an attorney, and if this is so it cannot be denied that some penalty is incurred by an attorney who reinforces his argument by announcing to the Court with endless repetition that an adverse decision will make the judges participants of a fraud and sharers in the infamy of its perpetrators.

It is not necessary, however, to elaborate this proposition here. It is plainly enough set forth in the opinion of the Court and does not even need exposition, for it must be obvious to the meanest apprehension that threats or menaces of any character addressed to a Court as a part of, or in aid of, the argument upon the law and facts of a case is an obstruction to the free and unbiased consideration which every cause should receive; and that if such means of influencing the action of the Court should become common, as they might if allowed to pass unrebuked, no rights would remain secure.

Mr. Philbrook himself, by his tardy disclaimer, made in the course of his oral argument, seems to admit the justice of these views.

But as above stated he makes no disclaimer or retraction in his written answer to the citation, which remains a public record of the court. On the contrary, he therein deliberately re-affirms and insists upon the propriety of every word contained in his brief. He claims, of course, never to have understood until his attention was called to it by a brother attorney during a recess of the court taken just before the close of his argument, that he was charged with having menaced the judges with any disagreeable consequences to themselves in case of an adverse decision. He asks us to believe that, with one of the most offensive passages of his brief set before his eyes in the terms of the citation, and with ten days for the careful reconsideration which he says

in his answer he has given to the matter, he never saw what is patent to the observation of every one else.

It is difficult to credit Mr. Philbrook with such simplicity of understanding, but it may be true that he has become so blinded by his animosity against Justice Harrison, and so dominated by the belief that the "secret transaction of Sept. 6, 1890," as he terms it, was a gross and wicked fraud, that he has lost the capacity of regarding any other aspect of the case. Indeed, his conduct during the hearing of the citation would seem to indicate that this is so. For, after devoting the greater part of two days to a vindication and renewal of his assault upon Justice Harrison, he interrupted the course of his argument for a few moments to inform the Court that during the recess a brother attorney in whom he had confidence had informed him that to some minds the language of his brief might convey the idea of a threat. He, however, professed not to see it even after his attention had been so directed to the matter, but offered, if the Court differed with him, to cancel the offensive passages in the briefs on file, and in those which he had distributed among his friends.

In my opinion this retraction was wholly insufficient. Mr. Philbrook had not only been informed by a brother attorney of the offensive construction which might be put upon his brief, he had been notified at the opening of the proceedings by the argument of Mr. Hayne that such was the construction placed upon it by the Committee of the Bar Association, and he was plainly informed from the bench that it was understood in the same way by the Court. If, in spite of these plain intimations, he was still unable to see what was so clearly apparent to others, it ought to have occurred to him that he would do well to take further advice of those in whom he had confidence as to the propriety of modifying his written answer, and of introducing into that permanent record a plain and unequivocal retraction or disavowal of the intention to threaten the Court. That he has never done so, nor offered to do so, leaves his offense entirely unmitigated in my eyes, and imposes upon the Court the necessity of inflicting the due penalty. As to the character of the penalty I concur in the view of the Court that it should be suspension of his privileges as an attorney.

Upon the other branch of the case I should have had nothing

to say if Mr. Philbrook had not, by devoting himself to that exclusively and ignoring everything else, challenged the judgment and opinion of the Court. Under the circumstances I cannot pass it over in silence without seeming to dissent from the views of my associates, and therefore I feel bound to add that, while I fully concede the right of Mr. Philbrook to attack the settlement between Levinson's executor and the Newmans, and to argue the propositions of fact and of law upon which he arraigns the conduct of Justice Harrison, I see nothing in the case to justify the conclusion that the advice given to the executor as to the construction of the partnership agreement, and his duty to settle according to such construction, was not entirely proper?

The proposition of law for which Mr. Philbrook contends, viz : that notwithstanding such settlement may have been entirely free from fraud ; in fact it must be held fraudulent in law—a constructive fraud—because advised and witnessed by a gentleman who was then a candidate for the Supreme bench, is one which it is open for him to argue, and since it is involved in the appeal of Rankin v. Newman, I express no opinion concerning it.

It appears from Mr. Philbrook's own showing that at the time of the settlement neither he nor his clients, the mother and sisters of Levinson, were claiming or had even suggested that the articles of partnership were invalid. On the contrary, they were then and ever afterwards asserting their validity and claiming under them. Nor did they then claim or suggest that the inventory made in pursuance of the said articles was false or incorrect in any particular, except in the omission of the item of the "good will," the whole controversy being merely as to the proper construction of an agreement then conceded to be valid and binding, with reference to the single question whether or not it embraced or excluded the "good will." As to this matter, the difference between them was open, express, and well understood, and there is not the slightest reason to suppose that Judge Harrison's opinion was less honest or less sound than that of Mr. Philbrook. Mr. Philbrook, indeed, is not entirely consistent with himself in this matter, for, unless I have misapprehended his position, he is now claiming that the Newmans, by the exercise of undue influence, induced their dying and par-

tially demented partner to execute an agreement which sacrificed his interest in the good will; and, if this is so, it is scarcely consistent to claim that Judge Harrison misconstrued it or that he can be blamed for the advice given to the executor at a time when neither Mr. Philbrook nor any one else had ever suggested fraud or undue influence in the procurement of the agreement.

I concur in the judgment.

BEATTY, C. J.

[*NEWS ARTICLE IN THE RECORD-UNION,*
JAN. 8, 1895.]

A LAWYER PUNISHED.

THE PHILBROOK CONTEMPT CASE DECISION.

The Full Text of the Supreme Court's Opinion.—The Limits of an Attorney's Privilege.

Following is the full text of the decision of the Supreme Court in the matter of the proceedings in the contempt case against Attorney Horace W. Philbrook. It will be read with interest by all interested in upholding the dignity of the Courts.

(In the Supreme Court. In Bank. Filed January 5, 1895.)

[The remainder of the article is a full copy of all the disbarment judgment, except the concurring opinion of Wm. H. Beatty, the Chief Justice.]

[*EDITORIAL IN THE RECORD-UNION,*
JAN. 10, 1895.]

CATERING TO MORBID TASTES.

The sensational press of California does its best to give the State a continual black eye, and it has considerable success. If the people of the East much read that order of California journals they must conclude that ours is a graceless community, an excellent one to avoid.

The San Francisco press, as a rule, is not content with treating of ascertained facts, or to await deliberative and orderly investigation. All its energy is expended in magnifying suspicions into apparent verities, and in dignifying as important every cranky notion that enters the head of a San Francisco Paul Pry. As we have often remarked, it is quite enough to have a charge laid at any door to have to insure the San Francisco press so treating it that the most of its readers will be disposed to accept the charge as a verdict of guilt—if they believe what they read.

The Supreme Court has seen fit to suspend one of its attorneys for gross offenses. Unquestionably right in its action, undoubtedly sustained by the facts which were clearly explained in the opinion, nevertheless a parcel of cranks who make it the business of their lives to suspect all things and esteem all men but themselves dishonest, rush off to the new Mayor of San Francisco and demand that he call a meeting of citizens to protest against the act of the Supreme Court in disbarring Philbrook "because he dared to point out what he considered the underhandedness of one of the Supreme Court Justices."

This indecent appeal to public passion one of the sensational press so presents as to impress the readers of its columns with the idea that there is something in it beside wind and anarchistic snarling at the courts of law.

Now the fact is, as the San Francisco press knows, though not one of them published the full text of the opinion of the court, one or two giving rather extended synopses, and the chief sensational offender treating it, in a few inches of space, cavalierly,

that Philbrook was not disbarred alone for a scandalous, black-mailing and wholly unwarranted assault upon a member of the bench, but because he attempted to cow, bulldoze and intimidate the entire court, and which, by the way, was an offense against the liberties of the people. He was not prevented from showing up the rascality of anybody; he had full liberty to prove all he wanted to, and, in fact, did introduce all the evidence he wished, and after assailing seriously Judges Wallace and Coffey, carried the whole of the testimony on which he relied up to the Supreme Court in voluminous transcripts on appeal, in cases not yet heard in the appellate Court.

He was punished for intolerable and repeated insolence, and for threats and attempted intimidation of the courts, of which offending he has been notoriously guilty in the past, says the Court, and so say his fellow members of the bar in San Francisco. Really, instead of calling meetings to protest in behalf of Philbrook, the people ought to assemble to approve the Court for punishing one of its own officers for attempting to cow and intimidate a tribunal of the people.

The San Francisco press should be moved by a noble impulse to stand by the Court in such a case, and to frown down sensational attempts to stir the people against it—but then who ever suspected the sensational press with being actuated by a noble impulse when it could lend its columns to an assault upon some one, and cater to the morbid taste for flash head lines.

[NEWS ARTICLE IN THE RECORD-UNION,
JAN. 14, 1895.]

CHIEF JUSTICE BEATTY.

HIS VIEWS ON THE PHILBROOK CONTEMPT CASE.

He Completely Knocks Out the Claim of Sympathy, and Shows
Why He Should Be Punished.

Chief Justice Beatty has filed a concurring opinion in the Philbrook contempt case. While he concurs in the judgment of

three years' disbarment, he puts it on grounds somewhat different from those stated by the Associate Justices, and in doing so he completely knocks the underpinning from beneath the men and women of radical socialistic tendencies who sought to arouse public sentiment against the Court, because, as they put it, "Philbrook was denied opportunity to expose the underhandedness" of the attorney who has since become a member of the Supreme Bench. The Chief Justice said:

"My views of this case differ in some particulars from those of my associates.

"It was not because of Mr. Philbrook's assault upon a member of this Court—gross and unjustifiable as I deemed it to be—that I joined in the order citing him to show cause. So far as that part of his offense was concerned I should have waited until the final determination of the appeal in Rankin vs. Newman, before deciding what, if any, action it was necessary or proper to take.

"But, as is clearly shown in the opinion of the Court (in re Philbrook), Mr. Philbrook did not confine himself to an assault upon Justice Harrison in his character of attorney for Levinson's executor, and as adviser and participant in the settlement of the executor with the surviving partners. He went much further; he distinctly threatened the other members of the court with public infamy and disgrace if they did not decide the cause of Rankin vs. Newman in his favor."

Chief Justice Beatty concedes the claim that if a Justice of the Court had been a party or an attorney or witness, or in any way connected with a case on appeal in such manner as to subject him to just criticism, counsel must be allowed the same freedom of criticism as with any other person. The fact of the party being a member of the Court, said the Chief Justice, had absolutely nothing to do with the case. The vice of Philbrook's action was said to lie in the fact that he had criticised Justice Harrison, apparently for no reason except that Harrison was a member of the court. Philbrook's language amounted to a threat or menace against the entire court, which could not be tolerated. The Chief Justice considered that if such language was to pass unrebuked, no rights would be secure. The opinion comments further on the fact that Philbrook made no retraction,

but on the hearing reiterated his charges. The Chief Justice said:

“It is difficult to credit Mr. Philbrook with such simplicity or understanding, but it may be true that he has become so blinded by his animosity against Justice Harrison, and so dominated by the belief that the “secret transaction of September 6, 1890,” as he terms it, was a gross and wicked fraud, that he has lost the capacity of regarding any other aspect of the case. Indeed, his conduct during the hearing of the citation would seem to indicate that this is so. For, after devoting the greater part of two days to a vindication and renewal of his assault upon Justice Harrison, he interrupted the course of his argument for a few moments to inform the Court that during the recess a brother attorney in whom he had confidence had informed him that to some minds the language of his brief might convey the idea of a threat. He, however, professed not to see it even after his attention had been so directed to the matter, but offered, if the Court differed with him, to cancel the offensive passages in the briefs on file, and in those which he had distributed among his friends.

“In my opinion this retraction was wholly insufficient. Mr. Philbrook had not only been informed by a brother attorney of the offensive construction which might be put upon his brief, he had been notified at the opening of the proceedings by the argument of Mr. Hayne that such was the construction placed upon it by the legal profession.”

Commenting on the fact that Philbrook made no retraction on the written record, the Chief Justice said :

“That he has never done so, nor offered to do so, leaves his offense entirely unmitigated in my eyes, and imposes upon the Court the necessity of inflicting the due penalty. As to the character of the penalty, I concur in the view of the Court that it should be suspension of his privileges as an attorney.”

The opinion concludes :

“It appears from Mr. Philbrook’s own showing that at the time of the settlement neither he nor his clients, the mother and sisters of Levinson, were claiming or had ever suggested that the articles of partnership were invalid. On the contrary, they were then and afterwards asserting their validity and claiming under them. Nor did they then claim or suggest that the inventory made in pursuance of the said

articles was false or incorrect in any particular, except in the omission of the item of the 'good-will,' the whole controversy being merely as to the proper construction of an agreement, then conceded to be valid and binding, with reference to the single question whether or not it embraced or excluded the 'good-will.'

"As to this matter, the difference between them was open, express, and well understood, and there is not the slightest reason to suppose that Judge Harrison's opinion was less honest or less sound than that of Mr. Philbrook. Mr. Philbrook, indeed, is not entirely consistent with himself in this matter, for, unless I have misapprehended his position, he is now claiming that the Newmans, by the exercise of undue influence, induced their dying and partially demented partner to execute an agreement which sacrificed his interest in the good-will; and, if this is so, it is scarcely consistent to claim that Judge Harrison misconstrued it, or that he can be blamed for the advice given to the executor at a time when neither Mr. Philbrook nor any one else had ever suggested fraud or undue influence in the procurement of the agreement.

"I concur in the judgment."

[*EDITORIAL IN THE RECORD-UNION, JAN. 14, 1895.*]

ENEMIES OF DECENCY ROUTED.

It will be recalled that since the elaborate opinion of the Supreme Court was filed and published in leading journals, clearly showing why Philbrook was disbarred, and that such disbarment was for good reason, and in defense of the sacred rights of freemen to have their courts protected, from threat and intimidation, a parcel of radical socialists and chronic agitators, who lose no opportunity to snarl at courts, the law and Government, and would if they could upturn all things orderly, went

before the Mayor of San Francisco, and petitioned him to call a mass meeting to denounce the Supreme Court for disbarring Philbrook, "because he showed up the underhandedness of one of the Justices."

This was gross misstatement, willful lying, anarchistic falsification, and the men who made it knew it to be so, for the record was before them showing that Philbrook was not disbarred for that reason ; that he was afforded full liberty and opportunity to show up anything he wanted to, and that he did attempt it, and dismally failed, not only in the opinion of the Supreme Court, but in the judgment of two of the Superior Court departments where he had his case, and also in the opinion of all who heard Philbrook state his case in open Court.

Now comes Chief Justice Beatty with a strong concurring opinion, which we publish quite fully elsewhere this morning and in which he points out that if a Justice of the Supreme Court, being a party to the case in which Philbrook's troubles arose, had acted in any way in it so as to subject him to criticism, Philbrook had the full right to criticize him, precisely as he might any other person. But, as the Chief Justice adds, there was not, and is not, a scintilla of evidence showing any such connection or action. But Philbrook has become so dominated by the idea that his view of the matter is the only possible one to be taken, that, as the Chief Justice well says, he has lost the capacity to regard the case in any other aspect.

The Chief Justice holds against Philbrook because he flatly refused to retract insulting and intimidating language addressed to the entire court; even after being told that the Court regarded his language as threatening he refused to withdraw it. He threatened the Court, says the Chief Justice, with public infamy, if it did not decide as he dictated.

Is there an American citizen worthy to draw a breath of the air of freedom who dares to stand forward and charge the Court with error or wrongdoing for punishing a fellow for such gross attempt to intimidate and browbeat a tribunal of the country erected by the people, before which Americans' rights are to be adjudicated? Can it be that there is a human being so lost to reason and a sense of common decency as after this to rail against the Court for doing its duty to the people in this case?

[*THE BILL PASSED BY THE LEGISLATURE.*]

Introduced Feb. 14, 1895; finally passed March 14, 1895; pocket-vetoed by the Governor without assigning any reason.]

AN ACT TO PROMOTE AND SECURE FREEDOM OF
SPEECH IN COURTS OF JUSTICE.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. No person shall be deprived of the right to practice as attorney or counsellor in any court of this State because of words spoken or written by him in the argument of any cause pending in any court, unless for such words he shall have been tried by jury and convicted of criminal libel, pursuant to the provisions of the Penal Code of the State of California.

SECTION 2. Any person who has been heretofore admitted to practice as an attorney and counsellor in the courts of this State, and who has been disbarred or suspended from such practice by the judgment or order of any court of this State, without trial by jury, for words spoken or written by him in the argument of any cause pending in such court, shall be entitled to practice as attorney and counsellor in all the courts of this State.

SECTION 3. This Act shall take effect immediately.

[*EDITORIAL IN THE RECORD-UNION, FEB. 18, 1895.*]

A SCANDALOUS BILL.

A bill has been introduced in the Legislature purporting to be an Act to promote freedom of speech in courts of justice. It should be entitled: "An Act to muzzle the courts of justice and

give free license to blackguards to unwind their tongues in abuse of the rights of the people."

The bill provides that no one shall be deprived of the right to practice as an attorney in a court of the State because of words spoken or written by him in argument, unless for such words he shall have been convicted by a jury of a criminal libel. The second section is retroactive, and restores to the roll of attorneys anyone who may have been disbarred or suspended for contempt of court.

Of such is the modern school of socialism. Our courts are to be prohibited from exercising the right to preserve order before them, and from holding in check the attorneys of the Philbrook stripe. That is to say, any pettifogger who chooses may stand at the bar and lampoon, libel, abuse and villify the people's magistrates, and they shall not check or restrain them.

Billingsgate may roll in oral torrents from the lips of scrub lawyers, and the courts must sit silent and endure it. Under such a practice how long would our judicial system continue to have value in the eyes of civilization. If the courts, which alone can admit to the bar, are to be stripped of the power to curb their own officers and compel them to be decent and respectful to the tribunals of the people; if they must permit whoever chooses to stand at the bar and lampoon, abuse and villify, or to write into the records of the court, scurrilous and contemptuous matter, how long will it be before the courts will become beer gardens and their dignity decline to the level of the fish market?

Is the bill in question engineered by the man Philbrook whom the Supreme Court recently suspended from the bar for three years for threatening the Court and attempting to coerce it? Is he hanging about the halls of legislation now for the purpose of undoing this just act of punishment by a tribunal that the people have decided shall command respect, not for the men who composed it, but for the sovereigns who created it.

Is he the same man who, when Deputy Superintendent of Instruction of San Francisco, under Prof. Anderson, wrote and sent in such a disrespectful report that he was promptly and justly bounced out? Is it for his benefit that a retroactive law is to be enacted and a restoration enforced that would drive every decent man from the California bench, and turn the courts over

to a class whose highest estimate of freedom is unrestrained license to do as they pleased? Vive l'anarchie.

[*EDITORIAL IN THE RECORD-UNION,
MARCH 2, 1895.*]

The Supreme Court of this State has been at it again. This body of jurists must have a bit put in its mouth; it has dared to rebuke another attorney, and to impose a fine upon an appellant for the benefit of respondent, for prosecuting a frivolous appeal. It has dared to interpose the dignity of the State between the indecency of a litigant who was using State process for purposes of delay only, and the right of the people to have litigation discouraged and their tribunals respected. Attorney Stephens having been sharply rebuked, and Attorney Philbrook, who has been boxed and sent to do penance, can now clasp hands and "buckle to" in the effort to have the Legislature declare by Act that our courts shall be free targets for cranks, anarchists, pettifoggers and conscienceless attorneys to throw mud upon. It is soberly proposed that attorneys may lampoon the courts, treat them with contempt, write into court records the most scandalous matter, abuse, threaten and browbeat Judges, and prosecute frivolous appeals, and the courts must stand it; that any vulgar rascals who choose to assail the people's tribunals shall go unwhipped, unless they are haled before a jury and tried and convicted of something that is not defined by the statute books as a crime, nor otherwise outside of the provisions which empower the courts to punish for contempt. The Philbrooks, in their contemptuous acts, receive the sympathy and the applause of the anarchists, radical socialists and chronic disturbers, who are of the same kidney as the crew that shouted in Haymarket Square, "Down with the law!" "Vive l'anarchie!" They are of the same sort that met in San Francisco recently, and passed resolutions denouncing the Supreme Court for that which every citizen who has the honor of his country at heart applauds.

[*EDITORIAL IN THE RECORD-UNION,*
MARCH 4, 1895.]

The infamous "Freedom of Speech" bill has been reported again to the Senate by its Judiciary Committee with recommendation that it do pass. Just what the committee means by this persistence is a puzzle. Here is a bill which plainly provides that no man shall be debarred from appearance in a court as an attorney-at-law for any words spoken or written by him in argument in any cause before the Court until he shall have been convicted by a jury of criminal libel. And this bill the Senate Judiciary Committee gives indorsement. More than this, the second section of the bill restores to practice any attorney who has been so suspended by any Court in the past for contempt by reason of words spoken or written in any cause. The bill should be entitled "An Act to restore H. W. Philbrook to practice at a bar from which he has been suspended for misconduct." The bill, if it becomes a law, will open the courts to the attack of every shyster in the land, and the Judges must sit silent under their abuse, for these fellows will always manage to keep just without the bounds of criminal libel. For instance, a contemptuous attorney may threaten a court that if it does not decide as he dictates he will bring wrath upon it. That would not be libel, but would be "contemptuous," so the fellow could brow-beat and abuse, and the court would be powerless to protect itself from insult. The bill is a shame and a disgrace. That such a measure should ever have been introduced is bad enough, but that a committee of lawyers should have reported it favorably is worse. Fortunately there are no genuine fears entertained that the thing will pass, or if it does, that a self-respecting Governor will approve it.

[*EDITORIAL IN THE RECORD-UNION,*
MARCH 9, 1895.]

THE FREEDOM OF SPEECH BILL.

The Senate has passed the so-called freedom of speech bill. It was argued that it does not prevent a court from fining an attorney for contempt, but only prevents the court from disbaring an attorney for words written or spoken in argument, until the offender has been convicted of criminal libel.

But suppose the contemptuous words are not libelous, but vulgar, insulting and threatening? Shall these things be permitted in our courts, and the tribunals rendered powerless to check them except by fine? Suppose a fine is imposed and the attorney fails to pay, he cannot be prevented from practicing in the court; that is, the court cannot suspend him from the bar while he is in contempt.

The second section is simply and flatly intended to restore Horace W. Philbrook to practice before the expiration of the three years of his suspension expires. And for this the Legislature is called upon to slap the Supreme Court in the face, and humiliate it before the people for doing just what its dignity and the law demanded should be done.

It is amazing that a legislative house should pass such a bill. It indicates the drift towards anarchism; it is as much a shout "stab the law" as was uttered in Haymarket Square in Chicago; it is a thing over which all the communistic and anarchistic circles will glorify if it becomes a law. It is in defiance of the powers wisely given to the courts for their protection and the protection of litigants and witnesses.

The Assembly should refuse to concur with the Senate regarding this bill. It is as vicious and mean a measure as was ever aimed at law and the courts.

[EDITORIAL IN THE RECORD-UNION,
MARCH 14, 1895.]

THE PHILBROOK CASE.

The San Francisco *Examiner*, true to its instincts—which are all lawless, as was demonstrated last summer—howls that the Philbrook restoration bill shall pass, and it takes occasion to say that no court should have the power to prevent a man from making a living. Unfortunately for the *Examiner's* position, that is precisely what courts are for, when citizens forfeit their liberties by offending. The lawyers are officers of the courts, and it is the bounden duty of the courts to discipline them. They have too much liberty now—liberty that has been expanding until a good many people had rather die than undergo the bulldozing and abuse that lawyers are permitted to indulge in. Witness, for instance, the disgraceful procedure in a criminal trial at Fresno not long ago. The courts ought to have the power to punish for contempt, and especially to castigate their own officers in that way. Philbrook's offense was not in his assault upon Justice Harrison; that could be overlooked, but he went beyond that and threatened the other members of the court and impuned [*sic*] their motives in advance of any knowledge on his part how the court would decide his case. In other words, he attempted to intimidate the court.

Now, it must occur to any sensible fair mind that this was more an assault upon the people than upon the court. The court is the creation of the people. It is the agency of the judicial system of the people. An assault upon it is the grossest of assaults upon liberty, since the courts constitute the bulwark of human freedom. They stand between the citizen and the agencies that would break down his rights and destroy his independence.

On what reasonable grounds any man can base support of the Philbrook bill we have in vain endeavored to discover. Pass the bill, let it become a law, and any lawyer in the land can write into his pleadings or his brief threats, abuse and scurrility against the bench, and the judges must sit and take it. Does any citizen imagine that such a system is conservative of justice, peace or integrity of the tribunals.

[*EDITORIAL IN THE RECORD-UNION,
MARCH 23, 1895.*]

REASON PREVAILING AT LAST.

For several weeks prior to the adjournment of the Legislature *The Record-Union* called attention, day after day, to the infamous Philbrook bill. We pointed out how it would demoralize the courts and place citizens having business in them at the mercy of conscienceless men and scoundrels. We exerted ourselves to awaken attention concerning this bad measure, and to show that the bill was inimical to human liberty, and tended to break down the chief safeguards of freedom.

Despite the presentation of the facts of the case, the press generally was either silent or openly pronounced in favor of the bill. The daily papers of the metropolis were especially friendly to it, and even went so far as to urge its adoption. The bill passed, and is now in the hands of the Governor. We have confidence that he will give it its death blow. He cannot afford to stab the courts of the land by giving approval to so revolutionary and dangerous a measure.

Now comes one of the leading papers of San Francisco, after the bill has passed, and a Governor's veto alone can prevent it becoming law, and awakens to the enormity of the measure. It says, though it knew all about the bill weeks before its passage:

"An Act has succeeded in passing both branches of the Legislature and is now in the hands of the Governor, which provides that 'no person shall be deprived of the right to practice as attorney or counselor in any court of this State, because of words spoken or written by him in the argument of any cause pending in any court, unless for such words he shall have been tried by jury and convicted of criminal libel pursuant to the provisions of the Penal Code of the State of California.' It is known as the 'Philbrook Bill,' because that is the name of its reputed author, and also because it provides for his restoration to the list of licensed attorneys, despite his recent disbarment by the Supreme Court.

"Without any reference whatever to the authorship of the bill, or to the clause which would remove its author's disa-

bilities, it is evidently a blunder of legislation in its present form. The glaring and gaping defect in the measure is this: That it forbids the disbarment of an attorney for any words whatever spoken in court. It will be noticed that it is only after a trial and conviction of criminal libel that an attorney by the provisions of this bill, can be disbarred. But there is no such thing as a trial or a conviction for *spoken words*, for the reason that such words are not libel at all, but are merely slander, and slander, however atrocious, has not been a crime. It will be seen at once that this defect is all sufficient to work the undoing of the Philbrook bill."

The amazing thing about it is that none of the press, save that of this city, pointed out these evils and dangers before the bill passed. *The Record-Union* and its local contemporaries really stood alone in its protest against the measure. They alone directed attention to the fact that an essential to the integrity of the courts is the power to discipline the officers of the court, and to preserve respect for its decrees by the exercise of the power to punish for contempt.

The Record-Union day after day called attention to the fact now dawning on the press of San Francisco that on the very face of it the bill was a contradiction because it requires that for words spoken in court, as well as written, one shall not be disciplined until convicted of criminal libel, when in fact no one can be tried and convicted of criminal libel for speaking. Nevertheless the Judiciary Committees of both houses approved the bill. We suspected then, as we do now, that it was done with full knowledge of its evils and with a view to having the bill pass, trusting to the Governor to veto it as the quickest way to be rid of that pertinacious lobbyist, H. W. Philbrook.

These committees being composed of lawyers, must be familiar with the Penal Code, and have known that if under the Philbrook bill one should stand in court and say to the Judges, as did Philbrook in writing, which in words he repeated by defending his screed, "You, the Court, must decide the case as I wish, or it will be patent, that you are corrupt, controlled by unworthy men and actuated by dishonest motives" that in such a case the offender would go scot free, because the law of libel does not include the speaking contemptuously of the courts, nor threats against them, nor assaults upon their integrity.

But the bill is bad for another reason; it attempts to restore to Philbrook privileges of which he has been justly deprived by a court because of gross offenses against a tribunal of the people, and therefore against the people themselves. When will the fanatics who shouted for freedom under the banner of this bill realize that every assault upon the courts the people erect is an assault upon the people themselves? The courts are not autocracies; they are not independencies. They are the creatures of the system of free government, the direct product of the free will of the people. What they do the people are responsible for; if not, then self-government is a farce and a cheat.

For these reasons one of the most suicidal acts of which the people can be guilty is the furthering of any scheme to render the courts less defensive of the liberties of the citizens. These tribunals of the land check the rapacity and ignorance of legislation; they are the bulwarks around about the constitutional reserves of the people; they are the barriers beyond which not even the Executive can pass. They render assumption of power without due process of law impossible; they mark the line that divides liberty from license, and assures the people the right to govern themselves. They stand the implacable foes of all encroachment upon constitutional and inalienable guarantees, by their decrees only can the wrong-doer be compelled to right the party he has injured. If they are not to have the capacity to punish for contempt, they will be deprived of the power to enforce their decrees in defense of human rights. If they may not hold the bar to the decency of good breeding and the rules of action that ages of experience have determined to be necessary for the decent ordering of procedure in the tribunals of men, they may as well close their doors and commit to lawyers the right to browbeat, abuse and lampoon, threaten, bulldoze and cow without let or hindrance.

[*EDITORIAL IN THE RECORD-UNION,*
MARCH 25, 1895.]

JUSTICE TO A COMMITTEE.

By inadvertence in commenting on the Philbrook bill, we spoke of the Judiciary Committees of the Legislature in the plural. The fact is that the Assembly Judiciary Committee reported adversely upon the infamous measure. The bill originated in the Senate, and had its counterpart in Assembly bill 806. On the 19th of February the Assembly Judiciary Committee unanimously reported that the bill should not pass. The bill passed the Senate on March 7th, and reaching the Assembly was substituted for the Assembly duplicate, and therefore went upon the Senate special file in the House.

On the 13th of March the bill passed the Assembly by 41 to 27, and it took a call of the House and considerable electioneering on the part of the proponents of the bill to muster the strength necessary to pass it. On the final passage, Mr. Bulla, Chairman of the Assembly Judiciary Committee, made one of the strongest speeches of his life against the vicious measure, and others seconded his contention that it was dangerous to put such a law upon the statute book. Mr. Swisler and other able men were prepared to speak on the question and solicitous to do so, but the previous question was moved by the friends of the bill, and under the gag further debate was cut off.

A motion to reconsider was taken up on the 14th, but the House refused to recede from its unwise action. Of all the lawyers in the Assembly only five voted for the bill. On the final passage, it was vigorously opposed, but ineffectually.

It will be seen, therefore, that it was fought by its opponents in the House. In the Senate it passed with but little opposition, compared to the efforts made in the Assembly to defeat it. It will always remain a puzzle why the Senate should have received from its Judiciary Committee a favorable report on this vicious bill, unless we accept the theory that the Senators on that committee, knowing the measure to be a bad one, concluded

to report in favor of its passage in order to be rid of a disagreeable and persistent lobbyist, trusting to the defeat of the bill in the lower house or its veto of the Governor.

If this is the correct theory, then there is reasonable hope that it will receive the disapproval of Governor Budd, himself an able lawyer, who will not fail to perceive the viciousness of the measure.

[*THE FINAL DECISION, FILED NOV. 5, 1896.*]

IN BANK.

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| Ira P. Rankin, Administrator of the Estate of John Levinson, Deceased, Appellant, | } No. 15,857. |
| vs. | |
| William J. Newman et al., Respondents. | |

William J. Newman, Benjamin Newman and the deceased, John Levinson, were partners in the merchandise business, and held interests therein in proportion to the amount of capital invested by each. The last articles of co-partnership between these parties were entered into January 24, 1889. And, among other things, they provided in detail the manner in which an inventory and appraisement of the partnership business should be taken annually, which inventory and appraisement should form the basis in estimating the net profit going to each partner.

The articles further provided as follows :

“In the event of the death of one of the co-partners the inventory provided for herein shall be taken as expeditiously as possible, and without unnecessary delay ; the surviving partners, if requested so to do, shall admit to the place of

business of the firm at least one person selected, designated and empowered by the heirs or legal representatives of the deceased partner to represent the interest of his estate in the co-partnership. Such person so representing the interests of the estate of the deceased partner shall have accorded to him access to all the books, papers and accounts of the firm, and may at his election remain and continue at the place of business thereof until all matters relating to the interests of the deceased partner shall have been fairly and satisfactorily arranged and settled and adjusted, and the total amount due to the estate of the deceased partner shall have been ascertained and determined.

"The total amount ascertained and determined to be due the estate of the deceased partner on account of his interest in the co-partnership shall be paid to the heirs or legal representatives of the deceased partner in twelve successive and equal monthly installments, commencing within one month from the time the amount due has been ascertained and determined; for the amount of which installments the surviving partners shall execute and deliver to such heirs or legal representatives their promissory notes, payable as aforesaid, without interest, and satisfactorily secured by endorsement or otherwise; provided, however, that the surviving partners shall have the option to continue the said co-partnership; the estate of the deceased partner taking the place of the decedent on such terms and conditions as may be agreed upon between the surviving partners and the legal representatives of the deceased partner, but it shall not be obligatory upon the surviving partners so to do. The surviving partners and their successors shall also have the right and privilege of continuing the business under the said designation and name of Newman & Levinson."

Levinson died February 25, 1890, and forthwith the Newmans made an inventory and appraisement of the partnership business, as provided by the articles of partnership, by which inventory and appraisement it was determined that the net amount of Levinson's interest in the assets of the firm was the sum of \$20,790.88. For this amount defendants prepared and procured to be properly endorsed their notes, twelve in number, for the sum of \$1,732.57 $\frac{1}{3}$, each bearing date February 26, 1890, payable at successive monthly intervals following that date, and within one month after Levinson's death tendered them to Raveley, the executor of the will of said deceased, who had then received letters testamentary from the Superior Court. In July, 1890, the Newmans

filed a petition in the court alleging that they were ready and willing to purchase the interest of the deceased in the partnership upon the terms stated in the articles, and had requested the executor to allow them to do so ; that he had refused, and praying an order directing him to convey that interest to them. The Court sustained a demurrer to such petition, on the ground that it had no jurisdiction to grant the order prayed for. Thereafter, on September 6, 1890, Raveley, the executor, being of the opinion that he had the power to accept the terms proposed by the Newmans, received the said notes, and on that day executed to them two certain papers, the first of which acknowledged the delivery of the notes "in pursuance of the provisions of the articles of partnership * * * for the interest of the estate of said Levinson in said partnership." The other paper set out the transaction more in detail, and stated that the amount of such notes was the amount of Levinson's interest in the assets of the firm, as determined by the said inventory and appraisement, and that the notes were received by the executor "in full payment and satisfaction of the amount due the estate of John Levinson, deceased, for the interest of said deceased and of his said estate in the co-partnership firm as the same has been ascertained, as above stated."

Levinson's residuary legatees were his mother and two sisters, all of full age. They in writing notified the Newmans on March 5, 1890, that they did not desire to employ any person to assist in taking the inventory of the assets of the late firm, then in progress, and the estate of the deceased had no representative in that undertaking, though the executor was often about the place of business, and both he and the legatees knew what was being done. No account of the good-will of the firm was taken in the inventory made by the defendants, nor was it in the inventory and appraisement of the estate returned to the Court by the executor. In the inventory and appraisement returned by the executor the value of the interest of Levinson in the partnership assets was stated at the same sum as that fixed by the appraisement of the defendants, to wit, \$20,790.88, and was adopted by the appraisers on the strength of that appraisement. The omission to value the good-will as part of the estate by the executor was resented by the legatees, and on this ground they petitioned

the Court to remove Raveley from his office of executor. He thereupon resigned, his accounts were settled, successive administrators with the will annexed carried on the administration until finally H. W. Philbrook was appointed, and he has been substituted as plaintiff of record herein. This action is essentially one in equity sounding largely in fraud, and asking for an accounting of the partnership affairs. The case has been before us in the past upon an appeal from the judgment (107 Cal., 602), where may be found an outline of the purposes of the action and the general framework of the pleadings.

Fraud is charged in the body of plaintiff's bill, and upon that ground relief in a great measure is sought. But in the opinion of the trial Judge, Hon. W. T. Wallace, which opinion is set forth in the record, it is stated that there is no evidence whatever to support such a charge. And, after a careful examination of the evidence, we find nothing therein even tending to show the practice of any fraud upon the heirs and legatees of the dead partner. It follows that all question of fraud is out of the case, and the only important question remaining is: had the executor under the articles of co-partnership the right to consummate the transfer of the deceased partner's interest in the business to the surviving partners for the consideration specified in said articles? Although this interrogatory presents a clear-cut proposition of law, still it is well to say that, if this transfer of the partnership interest should be set aside, as is here sought by appellant, and all parties be placed in *statu quo*, as of the day the transaction was had, no substantial results favorable to appellant's interests would ensue. It would be a valueless victory, for, as said by the trial Judge, upon an accounting the sum realized by the legatees would fall far short of the amount actually paid by the surviving partners to them.

In appellant's brief the law is conceded to be: "Where the co-partners in the partnership contract—articles of partnership—do actually contract that on the death of a partner the partnership property and business belongs to the survivor or survivors, fixing the price at which it is to be taken by the survivor or survivors, such contract is binding according to its terms." Upon such concession we are brought face to face with the articles of co-partnership for the purpose of weigh-

ing and testing them by the formula furnished by appellant ; and at the threshold of the investigation we are met by the objection that, at the date when those articles were entered into, the deceased partner, Levinson, was incapable by reason of mental incapacity of entering into any contract whatever. The mental incapacity of Levinson at the time was not even suggested in plaintiff's bill, and his mental status does not appear to be an element of the case that attracted serious attention at the trial. But some evidence came before the Court upon the question without objection, which, even in the absence of direct issues raised by the pleadings, should be considered as bearing upon the question. *Crowley vs. The City R. R. Co.*, 60 Cal., 626. There are various good reasons why this evidence should not be held sufficient to invalidate the articles of co-partnership, and as an all-sufficient reason we suggest that the implied finding of the Court was against any such contention. Appellant's principal witness to the point testified that if Levinson had read the articles of co-partnership he would have understood them, and there is no evidence in the record that he did not read them. As a salient circumstance bearing upon Levinson's mental capacity at that particular time, it may be noticed that some few days thereafter he executed his last will and testament, the will under which this administrator is now acting in prosecuting this litigation. It further appears that, upon his return from Europe after the execution of these articles, for several months and up to the time of his death he gave his personal attention to the business of the firm as he had always done in the past. We are satisfied there is nothing in the point.

We have quoted in detail that portion of the partnership contract which declares what shall be done with the business in case of the death of one of the partners. In this respect the provision of the contract is not well drawn. It is not clear, but, upon the contrary, somewhat vague and indefinite. At the same time, when carefully read and considered, but one conclusion can be arrived at ; and that is that, upon the death of one of the partners, the surviving members of the firm had at least the privilege and option of buying the interest of the deceased partner in the business upon certain terms. It is claimed upon the part of the Newmans that under the contract they were bound to do so.

But to support the validity of the contract in this regard they are not compelled to go to such length ; for, if they have an option by the articles of co-partnership to purchase upon stated terms, then they had the undoubted right to exercise that option and take the interest of the deceased partner, if they were so disposed. Harbster's Appeal, 125 Pa. St., 3. In that case it is said : " It requires no argument to show that the interest of the deceased partner ended when the firm gave notice that they would take it in accordance with the terms of the agreement." And in the case at bar, if the Newmans simply held an option to purchase the interest, there can be no question but that they exercised that option in favor of purchasing. It should be held that the co-partnership articles did not give the surviving partners a right to purchase, then the presence of all that portion of the contract providing for the mode and manner of payment by the Newmans for the deceased partner's interest would be inexplicable. It is provided in great detail that they should give their equal monthly installment notes, running over a period of twelve months, in payment of the interest of the deceased partner. Such provision beyond question contemplated a sale, and that a sale to the surviving partners in case of the death of one of the firm was in the minds of all parties when the contract was made, does not admit of doubt. There can be no other reasonable construction of the instruction.

It is insisted that the language here used provides no fixed and definite amount of money to be paid by the surviving partner for the interest of the deceased partner, and it is claimed that for such reason there is no contract, at least no contract sufficiently clear and explicit to be capable of enforcement. There is no case cited by appellant that goes to the lengths here insisted upon. But, upon the contrary, that is certain which may be made certain, and many of the cases bearing upon this question rest upon this principle. Numberless cases might be cited where courts have recognized the right of the partners to stipulate in the co-partnership articles that the purchase price for the interest of a deceased partner shall be fixed by an inventory and appraisement to be taken after the death of such partner. In the very nature of things, a fair purchase price of an interest in the firm at an indefinite future time would be incapable of ascertainment.

To fix the amount in advance would be simply a speculative gamble upon the part of all parties concerned, and hardly justifiable either in morals or law.

It is further contended that there is no mode whatever provided in the articles by which to ascertain the value of the interest of the deceased partner; and it may well be conceded that the provisions of the contract in this regard are not what they should be. In this particular the instrument is unhappily drawn, and well serves the purpose of being an invitation for litigation. As we have already seen, the articles provide for an annual inventory and appraisement in order that the actual financial status of the concern may be determined. This inventory and appraisement was provided for in order that the annual profit or loss of each partner might be known. A succeeding subdivision of the contract, which we have heretofore quoted in full, then in part declares: "In the event of the death of one of the co-partners, the inventory provided for herein shall be taken as expeditiously as possible, and without unnecessary delay. The surviving partners, if requested so to do, shall admit to the place of business of the firm at least one person selected * * * by the heirs or legal representatives of the deceased partner, to represent the interest of his estate in the co-partnership * * * and may at his election remain and continue at the place of business thereof until all matters relating to the interest of the deceased partner and his estate shall have been fairly and satisfactorily arranged and settled and adjusted, and the total amount due to the estate of the deceased partner shall have been so determined. The total amount ascertained and determined to be due the estate of the deceased partner, on account of his interest in the co-partnership, shall be paid to the heirs or legal representatives of the deceased partner, in twelve successive and equal monthly installments." If the language of the contract had included the words "and appraisement" after the word "inventory," there would have been no question of indefiniteness, and no possible technical objection as to the matter of construction. But the absence of those two words should not nullify the contract. It would be carrying the doctrine of technicality too far, if we should so hold. The true intent of the parties is plainly apparent from the language used. And that intent was that an inventory *and*

appraisement, as provided for in the articles, should furnish the basis for fixing the purchase price of the deceased partner's interest. Such is the fair construction of the language, taking it altogether, and, indeed, the only construction which can be given it. To say that the parties to the contract, while providing for a sale, and also providing for the manner and time for payment, never intended to provide as to the amount which should be paid, or to fix any mode by which the amount could be determined, would be going to lengths entirely unauthorized by the instrument itself. We hold that the mode and manner of fixing the amount of the purchase price is found within the language of the instrument itself, and that mode and manner is the inventory and appraisement provided for in a previous portion of the contract.

Conceding that the inventory and appraisement mentioned in the articles of co-partnership were intended by the partners to be used as the basis for fixing the value of a deceased partner's interest, then appellant contends that the contract was void as placing it in the power of the surviving partners to fix their own purchase price. There is no force in this contention. The contract contemplates the presence of a representative of the deceased partner during all these times, and incidentally it may be suggested that the executor was present during the time more or less, and that both he and the legatees had full knowledge of what was being done, and ample opportunity to be present at all times and upon all occasions to assist either personally or by agent. Again, as to the store and office fixtures, the value is fixed at a certain and definite amount. As to the stock of merchandise on hand, it is to be appraised at its actual value, but not to exceed its original cost. All solvent debts are to be taken at their face value. We see nothing so indefinite in these facts as to nullify the contract. The actual value of a piece of merchandise can be determined; and likewise it can be determined what is and what is not a solvent account. They are matters capable of ascertainment, and every partnership in the country is constantly engaged in determining them. There is certainly nothing so indefinite and uncertain as to the valuation to be fixed upon these assets as to in any way render the contract nugatory. In *Habster's Appeal*, cited by appellant, the purchase price was

fixed at the previous annual appraisement, with the proportion of profit or loss for the present year added or deducted, as the case might be. It certainly in that case was no easier to fix the amount of the profit or loss than it was in this case to fix the actual value of the stock, or determine what debt was a solvent account. Indeed, both of those factors of the business were necessary elements to be determined before the profit or loss could be fixed. In another of appellant's cases, *Blake vs. Barnes*, 26 Abb. (N. C.), 208, the purchase price by the surviving partners upon the death of a member of the firm was to be determined by an inventory and appraisement to be made as follows: "b. Accounts overdue at a fair estimate, to be determined, if necessary, by arbitration. c. Rejected machinery, or any other property or merchandise for which the firm is not willing to allow the valuation inventoried, or hereinbefore provided for, at the price offered by the highest bidder. d. For the stereo and electrotype plates, engravings * * * a sum equal to the gross profits of the firm for the last two complete business years preceding the time of settlement." It was not suggested that such a character of valuation avoided the contract, although the case was bitterly contested on other grounds. The case of *Simmons vs. Leonard*, 3 Hare's Chan., 581, goes away beyond the cases just cited. It was there provided that the surviving partners should take the interest of the deceased partner at a valuation shown by the last annual accounting, the articles having provided for annual accounts. A partner died, and no annual accounts had been taken. The representative of the deceased partner, as in this case, contended that there could be no sale, as the purchase price was not fixed. The vice-chancellor said: "The rule which justice and common sense would apply in such a case is, I think, too clear for serious argument. The proviso for sale in one event, that of the term running out, and the proviso for paying off a deceased partner's share (dying during the term) by installments, is conclusive evidence of an intention and agreement that the death of a partner during the term should not work a dissolution of the whole partnership, but that the survivors should have a right to carry it on with the accommodation of paying off the executor's of a deceased partner by installments." And, in conclusion, he held the contract for a sale

good, and that the purchase price should be determined by an accounting.

In *Dinham vs. Bradford*, 5 Chan. App. Cas., 519, it is held in effect that the articles of co-partnership might provide that the purchase price of a deceased partner's interest in the business should be fixed by three disinterested parties. In *Quinlivan vs. English*, 44 Mo., 46, the value of the interest of a deceased partner was to be fixed by an appraisement made after his death, and, in case of a dispute as to the valuation of the stock, the matter was to be submitted to three arbitrators. The Court held such an agreement valid and binding. Indeed, it may be suggested that the authorities are practically unanimous that any question of indefiniteness or uncertainty as to the amount of the purchase price, or the manner or mode in which such price is to be arrived at, in no way affects the right of the surviving partners under the partnership contract to buy. And it is held in many cases that such conditions only result in casting the burden upon the trial court to take an accounting and fix the price. We conclude that the contract is valid and binding in all respects; that the amount of the purchase price for the deceased partner's interest in the business was fixed by the articles with such sufficient certainty as to deny the Court the right to hold a general accounting. And, in the absence of a showing of fraud, to some extent at least, in the making of the inventory and appraisement which formed the basic element in fixing the purchase price, the transaction should be upheld.

While this litigation, judging by the size of the transcript and briefs before us, has now assumed somewhat mammoth proportions, there was a time in its early history when but a single matter was involved. And that matter arose upon the contention of the administrator that the good-will of the business was not included in the inventory and appraisement of the property of the deceased returned by the executor to the Probate Court. Owing to the views we entertain as to the validity of the contract, this contention may be disposed of in a few words. The contract of partnership provided: "The surviving partners and their successors shall also have the right and privilege of continuing the said business under the said designation and name of Newman & Levinson." We have no doubt that the good-

will of the business passed to the surviving partners under this provision of the contract, and in no sense formed an asset of the estate. Much could be said upon this question showing the instability of appellant's claims in this regard, but we deem it unnecessary.

The order appealed from is affirmed.

GAROUTTE, J.

We concur:

McFARLAND, J.,

VAN FLEET, J.

CONCURRING OPINION.

We concur in the judgment. We do not think we can say over the implied finding of the trial Court that the execution of the partnership articles was procured by fraud, or by the use of undue influence. The question is argued on the assumption that the Newmans were contracting with the expectation that they would be the survivors. We do not think we can assume that. Such a consideration was proper to be urged upon the trial Court under the charge of fraud, and evidence could have been addressed to that point. It does not appear that any such question was tried. It does appear that Levinson was then ill, but we do not find that the illness was deemed mortal. He lived more than one year thereafter, and during a portion of that time was able to attend to business.

But the advantages of the agreement are not all on one side. In case of a dissolution by death it would have been the privilege of the surviving partners, in case there was no provision made for such an event, to have stopped the business and to have gone into liquidation. In such case the goods would have been sold at a sacrifice, and the estate would have realized nothing for the good-will.

As to the construction and effect of the twelfth article of the partnership agreement between the defendants and their deceased partner, our views do not coincide with those expressed in the preceding opinion. The meaning of that article is of course the main question in the case, and for two years after the death of Levinson it was the only question—the attack upon the validity of the agreement based upon the alleged mental incapacity of Levin-

son, and the charge of undue influence by his surviving partners, being an evident after-thought. So much stress, however, has been laid upon this matter in the argument, and it forms so large and so essential a part of the charge of fraud, to the elaboration of which the voluminous brief of appellants is mainly devoted, that it cannot be ignored. The fact that the validity of the partnership agreement is affirmed by the implied finding of the Superior Court, and that there is substantial evidence to support such finding, is sufficient, as shown in the preceding opinion, to put an end to the question so far as it is material to the decision of this appeal, but with respect to the matter so vehemently and intemperately argued upon the part of appellant, and especially with reference to the torrent of vituperation poured out upon Mr. Justice Harrison, it is important to note that never upon any occasion during the time that he was acting as attorney for executor Raveley was there the slightest hint or suggestion to the effect that the partnership articles were in any respect invalid, or that Levinson at the time he signed them was mentally incapacitated or subjected to the slightest degree of undue influence. On the contrary, the whole dispute from the beginning, and for two years after the death of Levinson, was as to the construction of the agreement, and, in particular, whether, according to its terms, the estate of Levinson was entitled to separate and additional compensation for his interest in the good-will of the business of the firm. The mother and sisters of Levinson—all adults—and Mr. Philbrook, their attorney, assumed as a fact unquestioned that the contract was entirely valid, and that the rights of all parties were dependent upon its proper construction. Under these circumstances it would have been strange indeed if the attorneys for the executor had not taken the same view. Naturally and inevitably they confined their attention to the meaning of the contract, and to the steps necessary to be taken in carrying it out according to the intention of the parties. They (the firm of Jarboe and Harrison) had been employed by the executor within a few days after the death of Levinson, and Mr. Philbrook shortly afterwards was employed by the mother and sisters of the decedent to look especially after their interests. From the very first there was an open difference of opinion between these attorneys as to the meaning of the partnership agreement with respect

to the right of Levinson's estate to be paid an additional compensation for his interest in the good-will of the business, over and above the appraised value of his interest in the stock of goods, fixtures, accounts and other tangible assets of the firm. Jarboe and Harrison took the position, which they always maintained openly and unequivocally, that according to the proper construction of the agreement the surviving partners took the whole interest of the deceased partner, including the right to continue the business under the name of Newman & Levinson, upon payment of the appraised value of his share of the assets, to be ascertained by an inventory and appraisal according to the annual custom of the house, and that no separate allowance for good-will was contemplated or provided for. Mr. Philbrook took the opposite view, which he likewise consistently maintained. There was no other difference between the parties or their legal advisors, and when the inventory and appraisal were made their fairness and correctness, so far as they went, were not disputed, the only objection on the part of Mr. Philbrook and his clients being that it made no allowance for the value of the good-will. No charge of fraud or undervaluation of assets, or overstatement of liabilities in the appraisal, was then or ever during Judge Harrison's connection with the case made or suggested. The dispute was wholly upon a question of law, *i. e.*, the construction of a contract, and as to this there was, as above stated, no equivocation or concealment whatever.

Mr. Philbrook, however, seems to think that Jarboe and Harrison were guilty of a species of disloyalty to *his* clients because notwithstanding their opinion to the contrary, they did not sustain him in his position, and advise *their* client accordingly. But this contention is utterly unreasonable. They were attorneys for the executor, who was trustee not only of the legatees, but also of the creditors of his testator, and it was their imperative duty to advise him to proceed according to the true construction of the agreement as they interpreted it, and especially to see that he wasted no portion of the estate in fruitless litigation. In view of the difference of opinion between them and the attorney for the legatees, it was natural that they should take time to consider before deciding a question so delicate and so important, and equally natural that they should wish to submit the decision

of the matter to the Probate Court. But when that Court, in the proceedings instituted by the Newmans to compel the executor to transfer to them the interest of the deceased partner, declined to give a construction to the agreement upon the ground that it had no jurisdiction to decide upon the matter, the responsibility was thrown upon the attorneys for the executor to decide whether he should accept or reject the tender which the Newmans had made of the appraised value of Levinson's interest. Being obliged to take the responsibility of deciding, they naturally decided according to their own construction of the contract, and not according to Mr. Philbrook's. Differing, as we do, from the views which they entertained, we should never have thought of imputing a bad motive for their decision if, for no other, yet for the simple reason that, if wrong, it could harm no one but themselves and their client. A large part of Mr. Philbrook's tirade is based upon the assumption that Jarboe and Harrison did not really entertain the opinion which they expressed, and that they only advised the executor to the course that he took because they were acting in collusion with, and in the interest of, the Newmans. The absurdity of this position is manifest from the fact that any settlement between the executor and the Newmans, not made in accordance with the true construction of the contract, could only involve the parties to such settlement in loss and difficulty, and could not possibly foreclose or prejudice the rights of the residuary legatees.

By accepting the money and notes tendered by the Newmans in full payment for the interest of his testator in the firm, the executor placed himself in the position of unequivocally refusing to proceed against the surviving partners on account of the value of the good-will, and thereby gave to the residuary legatees the right to ask, as they ultimately did, for his discharge upon the ground that he was neglecting the duties of his trust. As to the executor, this was the sole effect of erroneous advice on this point. As to the Newmans, the effect of a settlement unauthorized by the Probate Court, and unwarranted by the terms of the partnership agreement, would simply be to expose them to an action for an accounting—this very action—in which the most rigorous and burdensome rules for computing the interest of Levinson in the assets of the firm and profits of the busi-

ness would be enforceable against them at the option of the administrator with the will annexed. To suppose, as the argument does, that the attorneys for the executor were deliberately giving him advice which they knew to be bad, in order to serve the interest of the Newmans at the expense of the legatees, when the only effect of the course advised would be to expose the executor to censure and punishment, and the Newmans to certain loss, is rather too heavy a draft on human credulity.

But it is not alone the acceptance of the tender made by the surviving partners, and the advice upon which the executor acted, that furnish grounds for Mr. Philbrook's suspicions. It is the *secrecy* of the transaction, and the fact that the receipts or acknowledgements given by the executor were in the handwriting of, and were witnessed by, a gentleman who at the date of the settlement had been nominated by a leading political party of the State for a seat on this bench, that excites his deepest indignation. He can see in these circumstances nothing but a deliberate attempt to defraud his clients and to corrupt this Court.

As to the secrecy of the transaction, the simple truth is that Mr. Philbrook and his clients were not called in to witness the payment of the money or the delivery of the receipts, and there was no reason why they should be present. It was not necessary that they should be there to protest in order not to be bound by the settlement. Their rights were not being concluded, or in any wise prejudiced. The fact that the notes and money were in the hands of the executor was nothing to them. The time for presentation of claims of creditors had not elapsed, the time for filing a first annual account had not arrived. No part of the money in the hands of the executor could then or for months thereafter be applied in payment of claims or legacies ; in short, neither the executor nor the Newmans could gain the slightest advantage, nor the legatees suffer the slightest loss, by concealment of the fact that the settlement had been made. And accordingly we find that, upon the very first occasion calling for a disclosure of the fact and the terms of the settlement, such disclosure was fully and unreservedly made in the most direct and certain terms. The settlement was made in September, and in November following, in response to a demand for an amended

inventory of Levinson's estate, which should include the item of good-will of the business, the surviving partners served upon Mr. Philbrook their written answer, which contained, among other things, the following passage :

"And deny that said William J. Newman, or said Benjamin Newman, has not fully accounted to said executor of said estate for any and all moneys, interests and claims due to said estate from said William J. Newman or said Benjamin Newman, or either of them, and aver, on the contrary, that they have fully accounted for any and all claims, payments and sums due said estate, in the manner set forth in said memorandum in writing, and in this behalf said William J. Newman and said Benjamin Newman aver that after the appointment of said S. W. Raveley as the executor of the last will and testament of said John Levinson, deceased, said executor requested them—said William J. Newman and Benjamin Newman—to account to him for the interest of said decedent in said co-partnership, and said William J. Newman and said Benjamin Newman did thereupon account to him and exhibit to him, said executor, all the books and assets of every kind belonging to said co-partnership, and it appeared therefrom that the entire interest of said decedent in the assets of said co-partnership amounted to the sum of \$20,790.80, and thereupon said William J. Newman and said Benjamin Newman elected and decided, under and in accordance with the provisions of said memorandum in writing, to purchase and pay for the interest of said decedent in said co-partnership, and thereupon executed to said S. W. Raveley, as executor aforesaid, twelve certain promissory notes, bearing date the 26th day of February, 1890, payable at monthly intervals thereafter, each for the sum of \$1,732.57⅓ (said promissory notes aggregating the sum of \$20,790.80), in full payment and discharge of the interest of said decedent in said co-partnership business, as the same had been ascertained and determined by the inventory and appraisal thereof, made in accordance with the provisions of said memorandum in writing."

Mr. Philbrook knows the meaning of a plain statement in plain English, and, therefore, it is not to be doubted that from and after the 19th day of November, 1890, he and his clients knew that executor Raveley had accepted from the surviving partners their notes for \$20,790.80, in full payment for his testa-

tor's interest in the co-partnership. He knew then and ever afterwards that Raveley, acting under the advice of his attorneys, would refuse to prosecute an action against the Newmans for a further accounting, and that the legatees, if they desired to have such an action instituted, must procure the removal of the executor, and the appointment of an administrator with the will annexed who would be guided by his advice. This is the course which was taken just one year after Mr. Philbrook was advised of the settlement, and, since he allowed a whole year to elapse after receiving the information before taking the only action that the settlement called for, he can hardly complain that the fact was not disclosed two months sooner than it was. As to the fact that Mr. Harrison, after his nomination for Justice of the Supreme Court, continued to advise executor Raveley in a matter in which he had been employed long before his nomination, and the further fact that he drew up and witnessed the papers which passed upon the settlement, it seems scarcely credible that a normal mind could regard them as evidence of fraud, or as an attempt to corruptly influence the decision of this Court. But it is out of these simple circumstances that Mr. Philbrook has constructed his elaborate theory of fraud and corruption.

The truth is there is not only no foundation for the argument upon this point, but the fact which it seeks to establish is totally irrelevant. The motives which may have prompted Raveley's attorneys in giving their advice, the advice itself and the action taken in consequence of it have not in the slightest degree affected the rights of Levinson's mother and sisters. If the advice was correct, as held in the preceding opinion, there never was any ground of complaint. If it was incorrect the settlement did not bind the estate, and the Newmans remained accountable for the true value of Levinson's interest at the time of his death, or at the option of his representatives for the profits of the business which they continued to carry on.

If these views are correct, and we have no doubt that they are, the whole question of fraud and corruption so gratuitously imported into the case may be dismissed from further consideration, and attention confined to the questions upon which the decision of the appeal necessarily depends.

The agreement between the Newmans and Levinson, which by

the preceding opinion is held to be a contract of sale, properly bears the construction put upon it. It was within the terms of the agreement and the contemplation of the parties that in some way a purchase by the survivors should be made. If the contract were in other respects free from objection, the case would be the not unusual one where the partners provide for the purchase by the survivors of the interest of a deceased member of the firm. Upon the exercise by the survivors of their right the sale would be complete, and the surviving partners would become debtors to the estate of the deceased partner, with the duty of accounting with his representative for the value of the deceased partner's interest.

Cases are not rare where contracts of this nature have been entered into and enforced. But, when upheld, it is because they are certain and specific in their terms, and unobjectionable upon any equitable consideration. The plan adopted by these partners for arriving at the value of their annual profits by deducting from their assets the amount of their liabilities was feasible and satisfactory while all the partners were living, but upon the death of Levinson not the profits merely but the whole of his interest was in some manner to be determined and withdrawn from the assets of the firm. While all of the partners were alive it did not matter how the assets were valued or the liabilities estimated, for what they did not take out as profits they retained in the assets of the firm. But, when one died, it became highly important that his share, then to be wholly withdrawn, should be fairly and fully valued. The apportionment of profits involved no transfer of title to the remaining capital; but such a transfer was necessarily involved in the transaction contemplated upon the death of a partner. Frequently, says Lindley (*Partnership*, § 429), in order to prevent the ruin consequent on the sale when a partnership happens to be dissolved by the death of a partner, it is provided that the share of the deceased may be taken by the survivors at the value shown by the last settlement agreed to by him, with the addition of any subsequent profit. But here a new valuation was to be made, and either no method is provided in the contract for arriving at that valuation, or, if a method be found, it can only be the method actually adopted—the valuation being made by the surviving partners themselves.

But, in the first instance, if no mode is prescribed, there is the absence of an essential element of a contract of sale which equity cannot supply—the price or the manner of determining the price. If the second, and the mode adopted be the one contemplated by the contract, then if the contract be valid it must result in holding that the surviving partners, trustees of the deceased partner's share, may not only purchase that share, but may fix the value which they will pay for it.

But, if we understand respondents, they do not contend, nor could they successfully, for the latter proposition, but they claim that by their agreement with the executor such value was legally ascertained, and herein it is claimed that the executor in effecting that settlement was merely carrying into effect the contract of his testator, as expressed in the articles. But something more was necessary. The testator's contract did not determine the amount of the consideration to be rendered by the survivor for his interest, and the exercise of a further act of discretion, judgment and assent was necessary to ascertain the amount. *Morrison vs. Rossignol*, 5 Cal., 64; *Breckenridge vs. Crocker*, 78 Cal., 529; *Vickers vs. Vickers*, 4 Eq. Cases, 529. It is said that these were cases where specific performance was sought, while in this instance the contract has been executed. This is true, but we are now dealing with the question of power in the executor, and these cases illustrate the proposition that in making the adjustment with defendants the executor necessarily supplied the missing terms of his testator's contract by the exercise of his own will and discretion.

Had the executor that authority? Defendants claim it for him by virtue of his general powers, and independently of the articles. At the common law such power was unquestionably his, but at common law the executor or administrator held the title of the personal property of the decedent, while with us title to personalty as well as to realty vests in the heirs, subject only to the right of the executor to take possession of it for specific purposes. At common law, then, the representative could sell personal property without restraint, so long as his acts were not fraudulent, but here his power to sell is dependent upon the assent of the Superior Court. Code of Civil Procedure, § § 1,517, 1,561;

Wickersham vs. Johnson, 104 Cal., 407; 2 Woerner's Law of Administration, § 331.

The provisions of the articles for the transfer of Levinson's interest were incomplete, in that no price was fixed, and that no disinterested person was named who should fix the price. The executor, by assenting to the valuation put by the Newmans on the partnership interest, assumed to supply the omission of the contract, and to fix a sum at which they might take the interest. It is not claimed that the executor derived authority to make the sale from the will of deceased. As the articles fall short of conferring that power, he could necessarily derive it only from the Court in the manner prescribed by statute. But under the statute it could be sold only "in the same manner as other personal property," namely, by authority and consent of the Superior Court.

Had the contract of partnership determined the price or prescribed some legal mode of ascertaining the price, the cases cited in the preceding opinion would be directly in point. Then the executor would have needed only to abide by the terms of the contract. Janin vs. Brown, 59 Cal., 37. The wisdom or policy of the contract would have been none of his concern. But under the facts the necessity for the supervisory power of the Court to order a sale, and for the caution of the statute that before confirming the sale of the partnership interest the Court or judge must carefully inquire into the condition of the partnership affairs, and must examine the surviving partner (C. C. P. § 1,524) was as manifest as if there had been no contract.

But it is further said that the inventory and appraisal were made in the manner usual during Levinson's life, and that this established a custom by which the articles are to be interpreted. But a customary mode of valuing assets, with a view of determining and withdrawing profits, is radically different from the requisites of a fair and reasonable estimate of all assets with a view to segregating the share of a deceased partner for purchase by the others.

We think the conclusion inevitable that the executor exceeded his authority in the settlement with defendants; that he did not, as is admitted, follow the statutory mode in making the settlement, and that there was no power for him to do so under the articles.

Leaving aside for the moment the question whether or not the good-will was included in the settlement, we think the evidence overwhelmingly establishes, as the trial Court held, that the sum found by the Newmans under the inventory and appraisement to be the value of Levinson's interest, and by the Newmans paid into the estate of Levinson, and received by the executor thereof, was not only a just amount, but indeed a very liberal amount. The evidence seems to be without conflict, and at least is strongly in favor of the respondents, that the appraised value put by the Newmans upon the interest of their deceased partner was greater than its actual worth. It was paid over and received, with knowledge then or soon afterward acquired of the claim of the Newmans that by the payment they took to themselves the deceased's interest and title in the assets of the co-partnership, and acquired the right to continue to conduct the business under the firm name. Thereafter the heirs, who were all of age, and who were represented throughout all court proceedings by their attorney, petitioned for, and, despite the protests of the executor, obtained, a decree of partial distribution, distributing to them as of the property of the estate a portion of the moneys thus obtained from the Newmans. At the time when this decree was sought and obtained the source from which the moneys came, and the circumstances under which it had been paid over to the estate, and the claims of the Newmans in regard thereto, were well known to them. Their opposing claim during all of this time seems to have been solely the one that the good-will had not passed to the Newmans, and was still personal property, and a part of the assets of Levinson's estate.

Having under these circumstances demanded and received the moneys so paid by the Newmans, the price having been fair and the transaction without fraud, we are of opinion that they are estopped from questioning the settlement while retaining the benefits of it, and from denying that there passed to the Newmans whatever would have passed under the terms of the contract had it been free from the defect above discussed.

What, then, would have passed, and what are appellants estopped from denying did pass? Unquestionably there passed to the Newmans Levinson's interest in the assets, as shown by the inventory and appraisement upon which the settlement was

based. But the articles provide further that the survivors shall have the right to continue the business under the firm name of Newman & Levinson. This clause may be construed either as dependent or independent of the covenant to purchase. If construed as dependent, then the contract was that upon purchasing under the inventory and appraisement the survivors would acquire the right to continue the business under the firm name. In this view appellants would also be estopped from denying that there passed to defendants the right to conduct the business under the firm name. If, however, this clause is to be construed as independent, it is of itself valid and operative, and conferred this right upon defendants regardless of other considerations. In either case it must follow that the right to conduct the business under the firm name passed to the defendants.

There thus comes under consideration the question which originally and for a long time was the sole point of difference between the parties, the question of the disposition of the good will; for it appears that, while the heirs from a very early date insisted that the good-will still remained a part of the property of the estate, and should be inventoried and appraised as such, they made no objection to the valuation put upon the deceased partner's interest, nor to the sale of that interest, saving that therein the good-will had not been valued. There was no concealment nor secrecy nor fraud in this. The heirs were informed that the good-will was not included, the contention of the executor and of the Newmans under the advice of counsel being that the good-will under the circumstances, did not become a part of the assets of the estate, but vested in the surviving partners.

While some of the earlier cases lean to the doctrine that, upon the death of one partner, the good-will goes to the survivors, the great weight of later decision is to the contrary. Thus, it is said by Bates (*Partnership*, Vol. 2, § 658): "It was once thought that upon the death of a partner his interest in the good-will ceased, and it survived to the surviving partner as his own property; this was doubted in *Crawshay vs. Collins*, 15 Ves., 218, and it is not now nor anywhere regarded as the law in trade partnerships, and though inseparable from the business, is an appreciable part of the assets in which the estate of a deceased partner can participate." Lindley says: "In the event of disso-

lution by death, it has been said that the good-will survives, and there is a clear decision to that effect, but this is not in accordance with modern authorities. They are wholly opposed to the notion that the value of the good-will as such belongs to the survivor." Lindley, *Partnership*, Vol. 2, § 443. And our Code declares (Civil Code, § 993): The good-will of a business is property transferable like any other.

It is not necessary to enter upon a discussion of the character of this intangible property known as good-will. The code solves many doubts by defining it to be the "expectation of continued public patronage." C. C., § 992.

Now the Newmans had purchased the interest of the estate in the assets as shown by the inventory, and had likewise acquired, as has been discussed, the right to continue the business under the firm name. We are unable to perceive any difference between the acquirement of a right to conduct this business under a firm name, and the acquirement of the good-will of the business. In other words, every possible "expectation of continued public patronage" to the business was gone when the right to conduct it under the firm name was parted with. If there were left anything of value, however shadowy and unreal, it might be ground for saying that the good-will yet remained to the estate, but the interest in the assets, together with the interest in the right to conduct the business under the firm name, having passed to the Newmans, nothing in the nature of good-will was left.

But there is another and equally convincing view which may be taken of these matters. Counsel have cited some cases in which it is said that it is the duty of the survivors to sell the property, and the business as a going business, and also to continue the business until this can be done. It may be that when a firm name is not composed of the name of the partners, but is a trade name only, different equities may arise, but we are sure in this case the Newmans could not have been required, in the interest of Levinson's estate, to sell the right to continue the business in the firm name nor to sell the good-will. There is not only the good-will which belongs to the firm, but in a successful business each partner may have gained a business standing and a reputation which is of value to him. One who sells the good-will of a business warrants by that very act that he will not

endeavor to draw off any of the customers. § 1,776, C. C. If the surviving partners can be required to do this they are practically prohibited from pursuing the same business at that place, and that may be their only means of gaining a livelihood. When a partnership is dissolved by death the survivors are absolved from all obligations except to close out the partnership affairs and to account to the estate. They do not owe a duty to the estate of the deceased to abstain from business even in the same line as that in which the partnership was engaged.

We are forced to believe in this case that the articles of co-partnership failed to provide, effectively, for a transfer of the interest of Levinson's estate in the co-partnership to the surviving partners. The executor and his counsel were of the opinion that it did so provide, and acted accordingly. Though we are convinced that they were mistaken, we do not doubt that the estate of Levinson realized much more from the property than would have been possible if the firm had gone into liquidation, as they must have done in the absence of the agreement. We think, therefore, that the agreement which the parties supposed they had made was to the material advantage of all concerned, and, had they provided for a valid method of determining the value of the interest of Levinson, it would have been just as well as legal.

For the lack of such method, however, the transfer to the Newmans was unauthorized and void. The legatees, however, of Levinson's estate, were all of age, and the estate was solvent.

Knowing all of the essential facts, they demanded and received the proceeds of the sale over the protests of the executor and of the Newmans. These protests amounted to the claim that, unless the transfer to the Newmans was valid, the money should be returned to them. If the transfer was regarded as invalid, plainly that should have been done. The Court could not distribute the money except upon the theory that it properly belonged to the estate. The Levinsons solicited and obtained such an adjudication, and they received the money so distributed.

No rights were or could have been reserved by the protest, styled a stipulation, which was filed by the Levinsons. The money was not voluntarily paid after the protest was made, but the payment was forced by the legatees. The protest does show,

however, that the legatees knew, or at least suspected, that the executor and the surviving partners claimed that the money in the hands of the executor was all that was coming to the estate from the partnership. It is stated, after admitting that the money was received by the executor "on account of the interest of said estate in the partnership assets," as follows: "But it is not admitted by said petitioners, or any of them, that no further sum remains due, or is to become due, from said surviving partners, or either of them, or assigns, to said estate, or to said petitioners, or any of them." There would have been no purpose in guarding against the implication if it had not been believed that the claim was that this was all. That the legatees well knew the claim made by the surviving partners abundantly appears from the other evidence.

This was a ratification of the sale on the part of the legatees which can be avoided only for fraud discovered afterwards, and then only upon a rescission and a restoration of all that they have received, or a showing of some excuse for not doing so.

The action is to compel the surviving partners to account for the interest of Levinson in the co-partnership. But the moneys which were distributed upon the application of the legatees were paid for the entire interest of Levinson in the co-partnership. To compel an accounting is to set aside or ignore that transaction. The money was not paid on account, and the legatees must have known that no such sum was due from the surviving partners to the estate, except upon the theory that they had purchased the interest of Levinson. The acceptance of the sum by the executor materially affected the condition of the surviving partners. But for that the concern would most likely have gone into liquidation, and large liabilities for goods would not have been incurred. They did not understand that they were assuming these liabilities and the risks of trade for the benefit of the estate of Levinson, but for themselves.

BEATTY, C. J.,
HENSHAW, J.,
TEMPLE, J.











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